

ASSEMBLY BILL

No. 685

Introduced by Assembly Member Karnette

February 21, 2007

An act to amend Sections 39807.5, 47646, 48915.5, 56021.1, 56026, 56027, 56028.5, 56030, 56032, 56040, 56043, 56045, 56046, 56050, 56055, 56100, 56101, 56125, 56129, 56138, 56146, 56156, 56167, 56167.5, 56168, 56170, 56172, 56174, 56174.5, 56175, 56194, 56205, 56240, 56243, 56245, 56300, 56302, 56320, 56321.5, 56322, 56328, 56330, 56331, 56340, 56341.1, 56342, 56342.1, 56342.5, 56343.5, 56345.5, 56347, 56351, 56351.5, 56352, 56361.5, 56362, 56363.1, 56363.3, 56363.5, 56365, 56366.1, 56366.2, 56366.3, 56366.8, 56369, 56383, 56425, 56426.25, 56426.6, 56426.9, 56431, 56440, 56441.11, 56443, 56454, 56456, 56473, 56475, 56476, 56500, 56500.5, 56500.6, 56501, 56504, 56504.5, 56506, 56507, 56508, 56601.5, 56606, 56836.04, 56845, 56851, and 56863 of the Education Code, and to amend Sections 7570, 7571, 7572.5, 7576, 7579.5, 7579.6, 7585, 7586.5, 7586.6, 7586.7, 95001, 95003, 95006, 95007, 95008, 95014, 95016, 95018, 95020, 95024, 95026, 95028, and 95029 of the Government Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as introduced, Karnette. Special education.

Existing law requires that every individual with exceptional needs, as defined, who is eligible be provided with educational instruction, services, or both, at no cost to his or her parent or guardian or, as appropriate, to him or her. A free appropriate public education is required to be made available to individuals with exceptional needs in

accordance with specified federal regulations adopted pursuant to the federal Individuals with Disabilities Education Act.

The United States Secretary of Education issued final regulations to implement changes made to the federal Individuals with Disabilities Education Act by the federal Individuals with Disabilities Education Improvement Act of 2004. Those regulations took effect on October 13, 2006.

This bill would make technical changes to various provisions of existing law regarding individuals with exceptional needs and special education and related services to conform various provisions to the new federal regulations, update cross-references in response to those regulations, and make other clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 39807.5 of the Education Code is
- 2 amended to read:
- 3 39807.5. (a) When the governing board of ~~any~~ a school district
- 4 provides for the transportation of pupils to and from schools in
- 5 accordance with Section 39800, or between the regular full-time
- 6 day schools they would attend and the regular full-time
- 7 occupational training classes attended by them as provided by a
- 8 regional occupational center or program, the governing board of
- 9 the district may require the parents and guardians of all or some
- 10 of the pupils transported, to pay a portion of the cost of this
- 11 transportation in an amount determined by the governing board.
- 12 (b) The amount determined by the *governing* board shall be no
- 13 greater than the statewide average nonsubsidized cost of providing
- 14 this transportation to a pupil on a publicly owned or operated transit
- 15 system as determined by the Superintendent of ~~Public Instruction,~~
- 16 in cooperation with the Department of Transportation.
- 17 (c) For ~~the~~ purposes of this section, “nonsubsidized cost” means
- 18 actual operating costs less federal subventions.
- 19 (d) The governing board shall exempt from these charges pupils
- 20 of parents and guardians who are indigent as set forth in rules and
- 21 regulations adopted by the board.

1 (e) A charge under this section may not be made for the
2 transportation of ~~handicapped children~~ *individuals with exceptional*
3 *needs as defined in Section 56026.*

4 (f) Nothing in this section shall be construed to sanction,
5 perpetuate, or promote the racial or ethnic segregation of pupils
6 in the schools.

7 SEC. 2. Section 47646 of the Education Code is amended to
8 read:

9 47646. (a) A charter school that is deemed to be a public school
10 of the local educational agency that granted the charter for purposes
11 of special education shall participate in state and federal funding
12 for special education in the same manner as any other public school
13 of that local educational agency. A child with disabilities attending
14 the charter school shall receive special education instruction or
15 designated instruction and services, or both, in the same manner
16 as a child with disabilities who attends another public school of
17 that local educational agency. The agency that granted the charter
18 shall ensure that all children with disabilities enrolled in the charter
19 school receive special education and designated instruction and
20 services in a manner that is consistent with their individualized
21 education program and is in compliance with the *federal*
22 *Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400*
23 *et seq.) and implementing regulations, including Section 300.209*
24 *of Title 34 of the Code of Federal Regulations.*

25 (b) In administering the local operation of special education
26 pursuant to the local plan established pursuant to Chapter 3
27 (commencing with Section 56205) of Part 30, in which the local
28 educational agency that granted the charter participates, the local
29 educational agency that granted the charter shall ensure that each
30 charter school that is deemed a public school for purposes of
31 special education receives an equitable share of special education
32 funding and services consisting of either, or both, of the following:

33 (1) State and federal funding provided to support special
34 education instruction or designated instruction and services, or
35 both, provided or procured by the charter school that serves pupils
36 enrolled in and attending the charter school. Notwithstanding any
37 other provision of this chapter, a charter school may report average
38 daily attendance to accommodate eligible pupils who require
39 extended year services as part of an individualized education
40 program.

(2) Any necessary special education services, including administrative and support services and itinerant services, that is provided by the local educational agency on behalf of pupils with disabilities enrolled in the charter school.

(c) In administering the local operation of special education pursuant to the local plan established pursuant to Chapter 3 (commencing with Section 56205) of Part 30, in which the local educational agency that granted the charter participates, the local educational agency that granted the charter shall ensure that each charter school that is deemed a public school for purposes of special education also contributes an equitable share of its charter school block grant funding to support districtwide special education instruction and services, including, but not limited to, special education instruction and services for pupils with disabilities enrolled in the charter school.

SEC. 3. Section 48915.5 of the Education Code is amended to read:

48915.5. (a) An individual with exceptional needs, as defined in Section 56026, may be suspended or expelled from school in accordance with ~~subsection (k) of Section 1415~~ *Section 1415(k)* of Title 20 of the United States Code, the discipline provisions contained in Sections ~~300.519 through 300.529~~ *300.530 to 300.537*, inclusive, of Title 34 of the Code of Federal Regulations, and other provisions of this part that do not conflict with federal law and regulations.

(b) A free appropriate public education for individuals with exceptional needs suspended or expelled from school shall be in accordance with ~~paragraph (1) of subsection (a) of Section 1412~~ *Section 1412(a)(1)* of Title 20 of the United States Code and ~~subsection (d) of Section 300.121~~ *Section 300.530(d)* of Title 34 of the Code of Federal Regulations.

(c) If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program.

SEC. 4. Section 56021.1 of the Education Code is amended to read:

1 56021.1. “Consent,” as provided in ~~subsection (b) of Section~~
2 ~~300.500~~ *Section 300.9* of Title 34 of the Code of Federal
3 Regulations, means all of the following:

4 (a) The parent or guardian has been fully informed of all
5 information relevant to the activity for which consent is sought,
6 in his or her native language, or other mode of communication.

7 (b) The parent or guardian understands and agrees in writing to
8 the carrying out of the activity for which his or her consent is
9 sought; and the consent describes that activity and lists the records,
10 if any, that will be released and to whom.

11 (c) The parent or guardian understands that the granting of
12 consent is voluntary on the part of the parent or guardian and may
13 be revoked at any time. If a parent or guardian revokes consent,
14 that revocation is not retroactive to negate an action that has
15 occurred after the consent was given and before the consent was
16 revoked.

17 SEC. 5. Section 56026 of the Education Code is amended to
18 read:

19 56026. “Individuals with exceptional needs” means those
20 persons who satisfy all the following:

21 (a) Identified by an individualized education program team as
22 a child with a disability, as that phrase is defined in ~~subparagraph~~
23 ~~(A) of paragraph (3) of Section 1401(3)(A) of Title 20 of the United~~
24 ~~States Code.~~

25 (b) Their impairment, as described by subdivision (a), requires
26 instruction, services, or both, which cannot be provided with
27 modification of the regular school program.

28 (c) Come within one of the following age categories:

29 (1) Younger than three years of age and identified by ~~the district,~~
30 ~~the special education local plan area, or the county office~~ *local*
31 *educational agency* as requiring intensive special education and
32 services, as defined by the ~~State Board of Education~~ *board*.

33 (2) Between the ages of three to five years, inclusive, and
34 identified by ~~the district, the special education local plan area, or~~
35 ~~the county office~~ *local educational agency* pursuant to Section
36 56441.11.

37 (3) Between the ages of five and 18 years, inclusive.

38 (4) Between the ages of 19 and 21 years, inclusive; enrolled in
39 or eligible for a program under this part or other special education
40 program prior to his or her 19th birthday; and has not yet completed

1 his or her prescribed course of study or who has not met proficiency
2 standards or has not graduated from high school with a regular
3 high school diploma.

4 (A) Any person who becomes 22 years of age during the months
5 of January to June, inclusive, while participating in a program
6 under this part may continue his or her participation in the program
7 for the remainder of the current fiscal year, including any extended
8 school year program for individuals with exceptional needs
9 established pursuant to ~~regulations adopted by the State Board of~~
10 ~~Education, pursuant to Article 1 (commencing with Section 56100)~~
11 ~~of Chapter 2 Section 3043 of Title 5 of the California Code of~~
12 ~~Regulations or Section 300.106 of Title 34 of the Code of Federal~~
13 ~~Regulations.~~

14 (B) Any person otherwise eligible to participate in a program
15 under this part shall not be allowed to begin a new fiscal year in
16 a program if he or she becomes 22 years of age in July, August,
17 or September of that new fiscal year. However, if a person is in a
18 year-round school program and is completing his or her
19 individualized education program in a term that extends into the
20 new fiscal year, then the person may complete that term.

21 (C) Any person who becomes 22 years of age during the months
22 of October, November, or December while participating in a
23 program under this act shall be terminated from the program on
24 December 31 of the current fiscal year, unless the person would
25 otherwise complete his or her individualized education program
26 at the end of the current fiscal year.

27 ~~(D) No school district, special education local plan area, or~~
28 ~~county office of education local educational agency~~ may develop
29 an individualized education program that extends these eligibility
30 dates, and in no event may a pupil be required or allowed to attend
31 school under the provisions of this part beyond these eligibility
32 dates solely on the basis that the individual has not met his or her
33 goals or objectives.

34 (d) Meet eligibility criteria set forth in regulations adopted by
35 the board, including, but not limited to, those adopted pursuant to
36 Article 2.5 (commencing with Section 56333) of Chapter 4.

37 (e) Unless disabled within the meaning of subdivisions (a) to
38 (d), inclusive, pupils whose educational needs are due primarily
39 to limited English proficiency; a lack of instruction in reading or
40 mathematics; temporary physical disabilities; social maladjustment;

1 or environmental, cultural, or economic factors are not individuals
2 with exceptional needs.

3 SEC. 6. Section 56027 of the Education Code is amended to
4 read:

5 56027. “Local plan” means a plan that meets the requirements
6 of *Chapter 2.5 (commencing with Section 56195) and Chapter 3*
7 *(commencing with Section 56205) and that is submitted by a single*
8 *school district, ~~special education local plan area, or county office~~*
9 *two or more school districts, or one or more school districts*
10 *together with one or more county offices of education.*

11 SEC. 7. Section 56028.5 of the Education Code is amended to
12 read:

13 56028.5. “Public agency” means a school district, county office
14 of education, special education local plan area, charter school, or
15 any other public agency under the auspices of the state or any
16 political subdivisions of the state providing special education or
17 related services to individuals with exceptional needs. For purposes
18 of this part, “public agency,” means all of the public agencies listed
19 in ~~Section 300.22~~ 300.33 of Title 34 of the Code of Federal
20 Regulations.

21 SEC. 8. Section 56030 of the Education Code is amended to
22 read:

23 56030. “Responsible local agency” means the school district
24 or county office designated in the local plan as the *administrative*
25 *entity* whose duties shall include, but are not limited to, receiving
26 and distributing regionalized services funds, providing
27 administrative support, and coordinating the implementation of
28 the plan.

29 SEC. 9. Section 56032 of the Education Code is amended to
30 read:

31 56032. “Individualized education program” means a written
32 document described in Sections 56345 and 56345.1 for an
33 individual with exceptional needs that is developed, reviewed, and
34 revised in a meeting in accordance with Sections ~~300.340~~ 300.320
35 ~~to 300.350~~ 300.328, inclusive, of Title 34 of the Code of Federal
36 Regulations and this part. It also means “individualized family
37 service plan” as described in Section 1436 of Title 20 of the United
38 States Code if the individualized education program pertains to an
39 individual with exceptional needs younger than three years of age.

1 SEC. 10. Section 56040 of the Education Code is amended to
2 read:

3 56040. (a) Every individual with exceptional needs, who is
4 eligible to receive educational instruction, related services, or both
5 under this part shall receive educational instruction, services, or
6 both, at no cost to his or her parents or, as appropriate, to him or
7 her. A free appropriate public education shall be available to
8 individuals with exceptional needs in accordance with paragraph
9 ~~(1) of subsection (a) of Section 1412~~ *Section 1412(a)(1)* of Title
10 20 of the United States Code and Section ~~300.121~~ *300.101* of Title
11 34 of the Code of Federal Regulations.

12 (b) An individual, aged 18 through 21 *years*, who, in the
13 educational placement prior to his or her incarceration in an adult
14 correctional facility was not identified as being an individual with
15 exceptional needs or did not have an individualized education
16 program under this part, is not entitled to a free appropriate public
17 education pursuant to ~~clause (ii) of subparagraph (B) of paragraph~~
18 ~~(1) of subsection (a) of Section 1412~~ *Section 1412(a)(1)(B)(ii)* of
19 Title 20 of the United States Code.

20 SEC. 11. Section 56043 of the Education Code is amended to
21 read:

22 56043. The primary timelines affecting special education
23 programs are as follows:

24 (a) A proposed assessment plan shall be developed within 15
25 calendar days of referral for assessment, not counting calendar
26 days between the pupil's regular school sessions or terms or
27 calendar days of school vacation in excess of five schooldays from
28 the date of receipt of the referral, unless the parent or guardian
29 agrees, in writing, to an extension, pursuant to subdivision (a) of
30 Section 56321.

31 (b) A parent or guardian shall have at least 15 calendar days
32 from the receipt of the proposed assessment plan to arrive at a
33 decision, pursuant to subdivision (c) of Section 56321.

34 (c) Once a child has been referred for an initial assessment to
35 determine whether the child is an individual with exceptional needs
36 and to determine the educational needs of the child, these
37 determinations shall be made, and an individualized education
38 program team meeting shall occur, within 60 days of receiving
39 parental consent for the assessment, pursuant to subdivision (a) of

1 Section 56302.1, except as specified in subdivision (b) of that
2 section and pursuant to Section 56344.

3 (d) The individualized education program team shall review the
4 pupil's individualized education program periodically, but not less
5 frequently than annually, pursuant to subdivision (d) of Section
6 56341.1.

7 (e) A parent or guardian shall be notified of the individualized
8 education program meeting early enough to ensure an opportunity
9 to attend, pursuant to subdivision (b) of Section 56341.5. In the
10 case of an individual with exceptional needs who is 16 years of
11 age or younger, if appropriate, the meeting notice shall indicate
12 that a purpose of the meeting will be the consideration of the
13 postsecondary goals and transition services for the individual with
14 exceptional needs, and the meeting notice described in this
15 subdivision shall indicate that the individual with exceptional needs
16 is invited to attend, pursuant to subdivision (e) of Section 56341.5.

17 (f) (1) An individualized education program required as a result
18 of an assessment of a pupil shall be developed within a total time
19 not to exceed 60 calendar days, not counting days between the
20 pupil's regular school sessions, terms, or days of school vacation
21 in excess of five schooldays, from the date of receipt of the parent's
22 or guardian's written consent for assessment, unless the parent or
23 guardian agrees, in writing, to an extension, pursuant to Section
24 56344.

25 (2) A meeting to develop an initial individualized education
26 program for the pupil shall be conducted within 30 days of a
27 determination that the child needs special education and related
28 services pursuant to ~~paragraph (2) of subsection (b) of Section~~
29 ~~300.343~~ *Section 300.323(c)(1)* of Title 34 of the Code of Federal
30 Regulations and in accordance with Section 56344.

31 (g) (1) Beginning not later than the first individualized
32 education program to be in effect when the pupil is 16 years of
33 age, and updated annually thereafter, the individualized education
34 program shall include appropriate measurable postsecondary goals
35 and transition services needed to assist the pupil in reaching those
36 goals, pursuant to paragraph (8) of subdivision (a) of Section
37 56345.

38 (2) The individualized education program for pupils in grades
39 7 to 12, inclusive, shall include any alternative means and modes
40 necessary for the pupil to complete the district's prescribed course

1 of study and to meet or exceed proficiency standards for graduation,
2 pursuant to paragraph (1) of subdivision (b) of Section 56345.

3 (3) Beginning not later than one year before the pupil reaches
4 the age of 18 years, the individualized education program shall
5 contain a statement that the pupil has been informed of the pupil's
6 rights under this part, if any, that will transfer to the pupil upon
7 reaching the age of 18, pursuant to *Section 56041.5*, subdivision
8 (g) of Section 56345, *and Section 300.520 of Title 34 of the Code*
9 *of Federal Regulations*.

10 (h) Beginning at age 16 or younger, and annually thereafter, a
11 statement of needed transition services shall be included in the
12 pupil's individualized education program, pursuant to Section
13 56345.1 and ~~subclause (VIII) of clause (i) of subparagraph (A) of~~
14 ~~paragraph (1) of subsection (d) of Section 1414~~ *Section*
15 *1414(d)(1)(A)(i)(VIII)* of Title 20 of the United States Code.

16 (i) A pupil's individualized education program shall be
17 implemented as soon as possible following the individualized
18 education program meeting, pursuant to Section 3040 of Title 5
19 of the California Code of Regulations.

20 (j) An individualized education program team shall meet at least
21 annually to review a pupil's progress, the individualized education
22 program, including whether the annual goals for the pupil are being
23 achieved, the appropriateness of the placement, and to make any
24 necessary revisions, pursuant to subdivision (d) of Section 56343.
25 The local educational agency shall maintain procedures to ensure
26 that the individualized education program team reviews the pupil's
27 individualized education program periodically, but not less
28 frequently than annually, to determine whether the annual goals
29 for the pupil are being achieved, and revises the individualized
30 education program as appropriate to address, among other matters,
31 the provisions specified in subdivision (d) of Section 56341.1,
32 pursuant to subdivision (a) of Section 56380.

33 (k) A reassessment of a pupil shall occur not more frequently
34 than once a year, unless the parent and the local educational agency
35 agree otherwise in writing, and shall occur at least once every three
36 years, unless the parent and the local educational agency agree, in
37 writing, that a reassessment is unnecessary, pursuant to Section
38 56381, and in accordance with ~~paragraph (2) of subsection (a) of~~
39 ~~Section 1414~~ *Section 1414(a)(2)* of Title 20 of the United States
40 Code.

1 (l) A meeting of an individualized education program team
2 requested by a parent or guardian to review an individualized
3 education program pursuant to subdivision (c) of Section 56343
4 shall be held within 30 calendar days, not counting days between
5 the pupil's regular school sessions, terms, or days of school
6 vacation in excess of five schooldays, from the date of receipt of
7 the parent's or guardian's written request, pursuant to Section
8 56343.5.

9 (m) If an individual with exceptional needs transfers from
10 district to district within the state, the following are applicable
11 pursuant to Section 56325:

12 (1) If the child has an individualized education program and
13 transfers into a district from a district not operating programs under
14 the same local plan in which he or she was last enrolled in a special
15 education program within the same academic year, the local
16 educational agency shall provide the pupil with a free appropriate
17 public education, including services comparable to those described
18 in the previously approved individualized education program, in
19 consultation with the parents, for a period not to exceed 30 days,
20 by which time the local educational agency shall adopt the
21 previously approved individualized education program or shall
22 develop, adopt, and implement a new individualized education
23 program that is consistent with federal and state law, pursuant to
24 paragraph (1) of subdivision (a) of Section 56325.

25 (2) If the child has an individualized education program and
26 transfers into a district from a district operating programs under
27 the same special education local plan area of the district in which
28 he or she was last enrolled in a special education program within
29 the same academic year, the new district shall continue, without
30 delay, to provide services comparable to those described in the
31 existing approved individualized education program, unless the
32 parent and the local educational agency agree to develop, adopt,
33 and implement a new individualized education program that is
34 consistent with state and federal law, pursuant to paragraph (2) of
35 subdivision (a) of Section 56325.

36 (3) If the child has an individualized education program and
37 transfers from an educational agency located outside the state to
38 a district within the state within the same academic year, the local
39 educational agency shall provide the pupil with a free appropriate
40 public education, including services comparable to those described

1 in the previously approved individualized education program, in
2 consultation with the parents, until the local educational agency
3 conducts an assessment as specified in paragraph (3) of subdivision
4 (a) of Section 56325.

5 (4) In order to facilitate the transition for an individual with
6 exceptional needs described in paragraphs (1) to (3), inclusive, the
7 new school in which the pupil enrolls shall take reasonable steps
8 to promptly obtain the pupil's records, as specified, pursuant to
9 subdivision (b) of Section 56325.

10 (n) The parent or guardian shall have the right and opportunity
11 to examine all school records of the child and to receive complete
12 copies within five business days after a request is made by the
13 parent or guardian, either orally or in writing, and before any
14 meeting regarding an individualized education program of ~~their~~
15 *his or her* child or any hearing or resolution session pursuant to
16 Chapter 5 (commencing with Section 56500), in accordance with
17 Section 56504 and Chapter 6.5 (commencing with Section 49060)
18 of Part 27.

19 (o) Upon receipt of a request from an educational agency where
20 an individual with exceptional needs has enrolled, a former
21 educational agency shall send the pupil's special education records,
22 or a copy thereof, to the new educational agency within five
23 working days, pursuant to subdivision (a) of Section 3024 of Title
24 5 of the California Code of Regulations.

25 (p) The department shall do all of the following:

26 (1) Have a time limit of 60 calendar days after a complaint is
27 filed with the state education agency to investigate the complaint.

28 (2) Give the complainant the opportunity to submit additional
29 information about the allegations in the complaint.

30 (3) Review all relevant information and make an independent
31 determination as to whether there is a violation of a requirement
32 of this part or Part B of the *federal* Individuals with Disabilities
33 Education Act (20 U.S.C. Sec. 1400 et seq.).

34 (4) Issue a written decision; pursuant to ~~Section 300.661~~
35 ~~300.152(a)(5)~~ of Title 34 of the Code of Federal Regulations.

36 (q) A prehearing mediation conference shall be scheduled within
37 15 calendar days of receipt by the Superintendent of the request
38 for mediation, and shall be completed within 30 calendar days
39 after the request for mediation, unless both parties to the prehearing

1 mediation conference agree to extend the time for completing the
2 mediation, pursuant to Section 56500.3.

3 (r) Any request for a due process hearing arising from
4 subdivision (a) of Section 56501 shall be filed within three years
5 from the date the party initiating the request knew or had reason
6 to know of facts underlying the basis for the request, except that
7 this timeline shall not apply to a parent if the parent was prevented
8 from requesting the due process hearing, pursuant to subdivision
9 (l) of Section 56505.

10 (s) The Superintendent shall ensure that, within 45 calendar
11 days after receipt of a written due process hearing request, the
12 hearing is immediately commenced and completed, including any
13 mediation requested at any point during the hearing process, and
14 a final administrative decision is rendered, pursuant to subdivision
15 (a) of Section 56502.

16 (t) If either party to a due process hearing intends to be
17 represented by an attorney in the due process hearing, notice of
18 that intent shall be given to the other party at least 10 calendar
19 days prior to the hearing, pursuant to subdivision (a) of Section
20 56507.

21 (u) Any party to a due process hearing shall have the right to
22 be informed by the other parties to the hearing, at least 10 calendar
23 days prior to the hearing, as to what those parties believe are the
24 issues to be decided at the hearing and their proposed resolution
25 of those issues, pursuant to paragraph (6) of subdivision (e) of
26 Section 56505.

27 (v) Any party to a due process hearing shall have the right to
28 receive from other parties to the hearing, at least five business days
29 prior to the hearing, a copy of all documents, including all
30 assessments completed and not completed by that date, and a list
31 of all witnesses and their general area of testimony that the parties
32 intend to present at the hearing, pursuant to paragraph (7) of
33 subdivision (e) of Section 56505.

34 (w) An appeal of a due process hearing decision shall be made
35 within 90 calendar days of receipt of the hearing decision, pursuant
36 to subdivision (i) of Section 56505.

37 (x) When an individualized education program calls for a
38 residential placement as a result of a review by an expanded
39 individualized education program team, the individualized
40 education program shall include a provision for a review, at least

1 every six months, by the full individualized education program
2 team of all of the following pursuant to paragraph (2) of
3 subdivision (c) of Section 7572.5 of the Government Code:

- 4 (1) The case progress.
- 5 (2) The continuing need for out-of-home placement.
- 6 (3) The extent of compliance with the individualized education
7 program.
- 8 (4) Progress toward alleviating the need for out-of-home care.

9 ~~(y) No later than the pupil's 17th birthday, a statement shall be~~
10 ~~included in the pupil's individualized education program that the~~
11 ~~pupil has been informed of his or her rights that will transfer to~~
12 ~~the pupil upon reaching 18 years of age pursuant to Section 300.517~~
13 ~~of Title 34 of the Code of Federal Regulations, Section 56041.5,~~
14 ~~and paragraph (8) of subdivision (a) of Section 56345.~~

15 ~~(z)~~
16 (y) A complaint filed with the department shall allege a violation
17 of the *federal* Individuals with Disabilities Education Act (20
18 U.S.C. Sec. 1400 et seq.) or a provision of this part that occurred
19 not more than one year prior to the date that the complaint is
20 received by the department, pursuant to Section 56500.2 and
21 ~~subsection (e) of Section 300.662~~ *Section 300.153(c)* of Title 34
22 of the Code of Federal Regulations.

23 SEC. 12. Section 56045 of the Education Code is amended to
24 read:

25 56045. (a) The superintendent shall send a notice to the
26 governing board of each local education agency within 30 days of
27 when the superintendent determines any of the following:

28 ~~(1) The district, special education local plan area, or county~~
29 ~~office local educational agency~~ is substantially out of compliance
30 with one or more significant provisions of this part, the
31 implementing regulations, provisions of the *federal* Individuals
32 with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or
33 the implementing regulations.

34 ~~(2) The district, special education local plan area, or county~~
35 ~~office local educational agency~~ fails to comply substantially with
36 corrective action orders issued by the department resulting from
37 focused monitoring findings or complaint investigations.

38 ~~(3) The district, special education local plan area, or county~~
39 ~~office local educational agency~~ fails to implement the decision of
40 a due process hearing officer for noncompliance with provisions

1 of this part, the implementing regulations, provisions of the *federal*
2 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
3 et seq.), or the implementing regulations, which noncompliance
4 results in the denial of, or impedes the delivery of, a free and
5 appropriate public education for an individual with exceptional
6 needs.

7 (b) The notice shall provide a description of the special
8 education and related services that are required by law and with
9 which the ~~district, special education local plan area, or county~~
10 ~~office~~ *local educational agency* is not in compliance.

11 (c) Upon receipt of the notification sent pursuant to subdivision
12 (a), the governing board shall at a regularly scheduled public
13 hearing address the issue of noncompliance.

14 SEC. 13. Section 56046 of the Education Code is amended to
15 read:

16 56046. (a) An employee of a ~~school district, county office of~~
17 ~~education, or a special education local planning area~~ *local*
18 *educational agency* may not directly or indirectly use or attempt
19 to use the official authority or influence of the employee for the
20 purpose of intimidating, threatening, coercing, or attempting to
21 intimidate, threaten, or coerce, any person, including, but not
22 limited to, a teacher, a provider of designated instruction and
23 services, a paraprofessional, an instructional aide, a behavioral
24 aide, a health aide, other educators or staff of the local educational
25 agency, a private individual or entity under contract with the local
26 educational agency, or a subordinate of the employee, for the
27 purpose of interfering with the action of that person at any time,
28 to assist a parent or guardian of a pupil with exceptional needs to
29 obtain services or accommodations for that pupil.

30 (b) If a person described in subdivision (a), believes an employee
31 or agent of a local educational agency is in violation of subdivision
32 (a) because of using or attempting to use official authority or
33 influence, that person may file a complaint under the Uniform
34 Complaint Procedures as set forth in Title 5 of the California Code
35 of Regulations. If a person files a complaint pursuant to this
36 subdivision, the state shall intervene directly and the conditions
37 for intervention in Section 4650 of Title 5 of the California Code
38 of Regulations are not applicable.

39 (c) This section does not limit or alter any right a person
40 described in subdivision (a) may have to file a complaint pursuant

1 to either a governing board-adopted grievance process or a
2 collectively bargained grievance process.

3 (d) This section does not do any of the following:

4 (1) Limit or alter the right or duty of a public school official to
5 direct or discipline an employee or contractor.

6 (2) Prevent a local educational agency from enforcing a law or
7 regulation regarding conflicts of interest, incompatible activities,
8 or the confidentiality of pupil records.

9 (e) (1) For~~the~~ purposes of this section, “services or
10 accommodations” includes information that would assist a parent
11 or guardian to obtain a free appropriate public education for his
12 or her child as guaranteed by the federal Individuals with
13 Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or other
14 services or accommodations guaranteed under Section 504 of the
15 *federal* Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and the
16 federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et
17 seq.), as well as state laws regarding individuals with exceptional
18 needs.

19 (2) For~~the purpose~~ *purposes* of this section, “use of official
20 authority or influence” includes promising to confer or conferring
21 any benefit, affecting or threatening to affect any reprisal, or taking,
22 directing others to take, recommending, processing, or approving
23 any personnel action, including, but not limited to, appointment,
24 promotion, transfer, assignment, performance evaluation,
25 suspension, or other disciplinary action. “Use of official authority
26 or influence” does not include good faith advocacy by an employee
27 of a public school agency, to any person including another agency
28 employee or contractor, regarding the services, if any, to be
29 provided to a pupil under the laws referred to in paragraph (1).

30 (f) This section does not diminish the rights, privileges, or
31 remedies of a public school employee under any other federal or
32 state law or under an employment contract or collective bargaining
33 agreement.

34 (g) A school employee’s or contractor’s assistance offered to a
35 parent or guardian of a pupil with exceptional needs to obtain
36 services or accommodations for that pupil may not interfere with
37 the school employee’s or contractor’s regular duties for the local
38 educational agency.

39 SEC. 14. Section 56050 of the Education Code is amended to
40 read:

1 56050. (a) For the purposes of this article, “surrogate parent”
2 shall be defined as it is defined in Section ~~300.515~~ 300.519 of Title
3 34 of the Code of Federal Regulations.

4 (b) A surrogate parent may represent an individual with
5 exceptional needs in matters relating to identification, assessment,
6 instructional planning and development, educational placement,
7 reviewing and revising the individualized education program, and
8 in other matters relating to the provision of a free appropriate
9 education to the individual. Notwithstanding any other provision
10 of law, this representation shall include the provision of written
11 consent to the individualized education program including
12 nonemergency medical services, mental health treatment services,
13 and occupational or physical therapy services pursuant to Chapter
14 26.5 (commencing with Section 7570) of Division 7 of Title 1 of
15 the Government Code. The surrogate parent may sign any consent
16 relating to individualized education program purposes.

17 (c) A surrogate parent shall be held harmless by the State of
18 California when acting in his or her official capacity except for
19 acts or omissions ~~which~~ that are found to have been wanton,
20 reckless, or malicious.

21 (d) A surrogate parent shall also be governed by Section 7579.5
22 of the Government Code.

23 SEC. 15. Section 56055 of the Education Code is amended to
24 read:

25 56055. (a) (1) Except as provided in subdivisions (b), (c), and
26 (d), a foster parent may exercise, to the extent permitted by federal
27 law, including, but not limited to, Section ~~300.20~~ 300.30 of Title
28 34 of the Code of Federal Regulations, the rights related to his or
29 her foster child’s education that a parent has under Title 20
30 (commencing with Section 1400) of the United States Code and
31 pursuant to Part 300 (commencing with Section 300.1) of Title 34
32 of the Code of Federal Regulations. The foster parent may represent
33 the foster child for the duration of the foster parent-foster child
34 relationship in matters relating to identification, assessment,
35 instructional planning and development, educational placement,
36 reviewing and revising an individualized education program, if
37 necessary, and in all other matters relating to the provision of a
38 free appropriate public education of the child. Notwithstanding
39 any other provision of law, this representation shall include the
40 provision of written consent to the individualized education

1 program, including nonemergency medical services, mental health
2 treatment services, and occupational or physical therapy services
3 pursuant to this chapter. The foster parent may sign any consent
4 relating to individualized education program purposes.

5 (2) A foster parent exercising rights relative to a foster child
6 under this section may consult with the parent or guardian of the
7 child to ensure continuity of health, mental health, or other services.

8 (b) A foster parent who had been excluded by court order from
9 making educational decisions on behalf of a pupil does not have
10 the rights relative to the pupil set forth in subdivision (a).

11 (c) This section only applies if the juvenile court has limited
12 the right of the parent or guardian to make educational decisions
13 on behalf of the child, and the child has been placed in a planned
14 permanent living arrangement pursuant to paragraph (3) of
15 subdivision (g) of Section 366.21, Section 366.22, Section 366.26,
16 or paragraph (5) or (6) of subdivision (b) of Section 727.3 of the
17 Welfare and Institutions Code.

18 (d) For purposes of this section, a foster parent shall include a
19 person, relative caretaker, or nonrelative extended family member
20 as defined in Section 362.7 of the Welfare and Institutions Code,
21 who has been licensed or approved by the county welfare
22 department, county probation department, or the State Department
23 of Social Services, or who has been designated by the court as a
24 specified placement.

25 SEC. 16. Section 56100 of the Education Code is amended to
26 read:

27 ~~56100. The State Board of Education~~ *board* shall do all of the
28 following:

29 (a) Adopt rules and regulations necessary for the efficient
30 administration of this part.

31 (b) Adopt criteria and procedures for the review and approval
32 by the board of local plans.

33 (c) Adopt size and scope standards for determining the efficacy
34 of local plans submitted by special education local plan areas,
35 pursuant to subdivision (a) of Section 56195.1.

36 (d) Provide review, upon petition, to ~~any district, special~~
37 ~~education local plan area, or county office~~ *a local educational*
38 *agency* that appeals a decision made by the department that affects
39 its providing services under this part except a decision made
40 pursuant to Chapter 5 (commencing with Section 56500).

1 (e) Review and approve a program evaluation plan for special
2 education programs provided by this part in accordance with
3 Chapter 6 (commencing with Section 56600). This plan may be
4 approved for up to three years.

5 (f) Recommend to the Commission on Teacher Credentialing
6 the adoption of standards for the certification of professional
7 personnel for special education programs conducted pursuant to
8 this part.

9 (g) Adopt regulations to provide specific procedural criteria and
10 guidelines for the identification of pupils as individuals with
11 exceptional needs.

12 (h) Adopt guidelines of reasonable pupil progress and
13 achievement for individuals with exceptional needs. The guidelines
14 shall be developed to aid teachers and parents or guardians in
15 assessing an individual pupil's education program and the
16 appropriateness of the special education services.

17 (i) In accordance with the requirements of federal law, adopt
18 regulations for all educational programs for individuals with
19 exceptional needs, including programs administered by other state
20 or local agencies.

21 (j) Adopt uniform rules and regulations relating to parental due
22 process rights in the area of special education.

23 (k) Adopt rules and regulations regarding the ownership and
24 transfer of materials and equipment, including facilities, related
25 to transfer of programs, reorganization, or restructuring of special
26 education local plan areas.

27 SEC. 17. Section 56101 of the Education Code is amended to
28 read:

29 56101. (a) ~~Any district, special education local plan area,~~
30 ~~county office, or a public education agency,~~ as defined in Section
31 ~~56500~~ 56028.5, may request the board to grant a waiver of any
32 provision of this code or regulations adopted pursuant to that
33 provision if the waiver is necessary or beneficial to the content
34 and implementation of the pupil's individualized education
35 program and does not abrogate any right provided individuals with
36 exceptional needs and their parents or guardians under the *federal*
37 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
38 et seq.), or to the compliance of a ~~district, special education local~~
39 ~~plan area, or county office~~ *local educational agency* with the
40 *federal* Individuals with Disabilities Education Act (20 U.S.C.

1 Sec. 1400 et seq.), Section 504 of; the *Federal Rehabilitation Act*
2 of 1973 (29 U.S.C. Sec. 794), and federal regulations relating
3 thereto.

4 (b) The board may grant, in whole or in part, any request
5 pursuant to subdivision (a) when the facts indicate that failure to
6 do so would hinder implementation of the pupil's individualized
7 education program or compliance by a ~~district, special education~~
8 ~~local plan area, or county office~~ *local educational agency* with
9 federal mandates for a free, appropriate education for children or
10 youth with disabilities.

11 SEC. 18. Section 56125 of the Education Code is amended to
12 read:

13 56125. (a) ~~The superintendent~~ *Superintendent shall monitor;*
14 *provide technical assistance, and enforce the provisions of this*
15 *part pursuant to Section 56600.6.*

16 (b) *The Superintendent* shall monitor the implementation of
17 local plans by periodically conducting onsite program and fiscal
18 reviews, in accordance with Sections ~~300.550 to 300.556~~ *300.114*
19 *to 300.120*, inclusive, of Title 34 of the Code of Federal
20 Regulations.

21 SEC. 19. Section 56129 of the Education Code is amended to
22 read:

23 56129. ~~The superintendent~~ *Superintendent* shall maintain the
24 state special schools and diagnostic centers in accordance with
25 Part 32 (commencing with Section 59000) so that the services of
26 those schools and centers are coordinated with the services of the
27 ~~district, special education local plan area, or the county office~~ *local*
28 *educational agency.*

29 SEC. 20. Section 56138 of the Education Code is amended to
30 read:

31 56138. The Superintendent shall develop, and the ~~state~~ board
32 shall adopt, performance goals and indicators for individuals with
33 exceptional needs that are consistent with, to the maximum extent
34 appropriate, the standards for all pupils in the public education
35 system, in accordance with the provisions of ~~paragraph (15) of~~
36 ~~subsection (a) of Section 1412~~ *Section 1412(a)(15)* of Title 20 of
37 the United States Code *and Section 300.157 of Title 34 of the Code*
38 *of Federal Regulations.*

39 SEC. 21. Section 56146 of the Education Code is amended to
40 read:

1 56146. It is the intent of the Legislature that local plans for
2 special education local plan areas, adopted pursuant to Chapter
3 2.5 (commencing with Section 56195) *and Chapter 3 (commencing*
4 *with Section 56205)*, shall provide for federal funds available under
5 Part B of the *federal* Individuals with Disabilities Education Act
6 (20 U.S.C. Sec. 1400 et seq.) to individuals with exceptional needs
7 enrolled in charter schools.

8 SEC. 22. Section 56156 of the Education Code is amended to
9 read:

10 56156. (a) Each court, regional center for the developmentally
11 disabled, or public agency that engages in referring children to, or
12 placing children in, licensed children's institutions shall report to
13 the special education administrator of the ~~district~~, special education
14 local plan area, ~~or county office~~ in which the licensed children's
15 institution is located any referral or admission of a child who is
16 potentially eligible for special education.

17 (b) At the time of placement in a licensed children's institution
18 or foster family home, each court, regional center for the
19 developmentally disabled, or public agency shall identify all of
20 the following:

21 (1) Whether the courts have specifically limited the rights of
22 the parent or guardian to make educational decisions for a child
23 who is a ward or dependent of the court.

24 (2) The location of the parents, in the event that the parents
25 retain the right to make educational decisions.

26 (3) Whether the location of the parents is unknown.

27 (c) Each person licensed by the state to operate a licensed
28 children's institution, or his or her designee, shall notify the special
29 education administrator of the ~~district~~, special education local plan
30 area, ~~or county office~~ in which the licensed children's institution
31 is located of any child potentially eligible for special education
32 who resides at the facility.

33 (d) ~~The superintendent~~ *Superintendent* shall provide each county
34 office of education with a current list of licensed children's
35 institutions in that county at least biannually. The county office
36 shall maintain the most current list of licensed children's
37 institutions located within the county and shall notify each district
38 and special education local plan area within the county of the
39 names of licensed children's institutions located in the geographical
40 area of the county covered by the district and special education

1 local plan area. The county office shall notify the director of each
2 licensed children's institution of the appropriate person to contact
3 regarding individuals with exceptional needs.

4 SEC. 23. Section 56167 of the Education Code is amended to
5 read:

6 56167. (a) Individuals with exceptional needs who are placed
7 in a public hospital, state licensed children's hospital, psychiatric
8 hospital, proprietary hospital, or a health facility for medical
9 purposes are the educational responsibility of the ~~district, special~~
10 ~~education local plan area, or county office~~ *local educational agency*
11 in which the hospital or facility is located, as determined in local
12 written agreements pursuant to subdivision (e) of Section 56195.7.

13 (b) For the purposes of this part, "health facility" shall have the
14 definition set forth in Sections 1250, 1250.2, and 1250.3 of the
15 Health and Safety Code.

16 SEC. 24. Section 56167.5 of the Education Code is amended
17 to read:

18 56167.5. Nothing in this article shall be construed to mean that
19 the placement of any individual with exceptional needs in a hospital
20 or health facility constitutes a necessary residential placement, as
21 described under Section ~~300.302~~ *300.104* of Title 34 of the Code
22 of Federal Regulations, for which the ~~district, special education~~
23 ~~local plan area, or county office~~ *local educational agency* would
24 be responsible as an educational program option under this part.

25 SEC. 25. Section 56168 of the Education Code is amended to
26 read:

27 56168. (a) A public hospital, state licensed children's hospital,
28 psychiatric hospital, proprietary hospital, or a health facility for
29 medical purposes located either within and outside of this state
30 that did not provide special education to individuals with
31 exceptional needs who satisfy the criteria set forth in paragraph
32 (2) of subdivision (c) of Section 56026 pursuant to a waiver granted
33 under Section 56366.2 for the 1994–95 school year, is ineligible
34 for certification as a nonpublic, nonsectarian school pursuant to
35 Section 56034 and Sections 56365 to 56366.5, inclusive, to provide
36 special education to individuals with exceptional needs. Districts,
37 special education local plan areas, or county offices shall have
38 until September 1, 1994, to find an appropriate alternative
39 placement for any children currently served in one of these
40 programs.

(b) ~~The district, special education local plan area, or county office Pursuant to Section 56167, the local educational agency~~ in which the hospital or health facility is located has the educational responsibility for individuals with exceptional needs who reside in these facilities.

(c) A hospital or health facility is eligible for certification as a nonpublic, nonsectarian agency pursuant to Section 56035 and Sections 56365 to 56366.5, inclusive, to provide designated instruction and services to individuals with exceptional needs whether the child attends a public or nonpublic school or is enrolled in both a public and nonpublic school program as specified in Section 56361.5.

SEC. 26. Section 56170 of the Education Code is amended to read:

56170. As used in this part, “private school children with disabilities” means children with disabilities enrolled by a parent in private schools or facilities, in accordance with Section ~~300.450~~ *300.130* of Title 34 of the Code of Federal Regulations, other than individuals with exceptional needs placed by a ~~district, special education local plan area, or county office~~ *local educational agency* in a nonpublic, nonsectarian school pursuant to Section 56365.

SEC. 27. Section 56172 of the Education Code is amended to read:

56172. (a) The local educational agency shall make provision for the participation of private school children with disabilities in special education programs under this part by providing them with special education and related services in accordance with the provisions of this article and ~~subparagraph (A) of paragraph (10) of subsection (a) of Section 1412~~ *Section 1412(a)(10)(A)* of Title 20 of the United States Code *and Section 300.132 of Title 34 of the Code of Federal Regulations*.

(b) The local educational agency or, where appropriate, the department, shall ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children in accordance with ~~clause (iii) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412~~ *1412(a)(10)(A)(iii)* of Title 20 of the United States Code *and Section 300.134 of Title 34 of the Code of Federal Regulations*.

(c) When timely and meaningful consultation as required in subdivision (b) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if the representatives do not provide the affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the department in accordance with ~~clause (iv) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412~~ *Section 1412(a)(10)(A)(iv)* of Title 20 of the United States Code.

(d) A private school official shall have the right, pursuant to ~~clause (v) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412~~ *Section 1412(a)(10)(A)(v)* of Title 20 of the United States Code *and Section 300.136 of Title 34 of the Code of Federal Regulations*, to submit a complaint to the department that the local educational agency did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

(e) The provision of equitable services for children enrolled in private schools by their parents shall be provided by employees of a public agency, as defined in Section 56028.5, or through contract by the public agency with an individual, association, agency, organization, or other entity.

(f) Special education and related services, including materials and equipment, provided to a pupil with a disability who has been parentally placed in a private school shall be secular, neutral, and nonideological, as required by ~~clause (vi) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412~~ *Section 1412(a)(10)(A)(vi)* of Title 20 of the United States Code *and Section 300.138 of Title 34 of the Code of Federal Regulations*.

SEC. 28. Section 56174 of the Education Code is amended to read:

56174. ~~The district, special education local plan area, or county office~~ *local educational agency* shall not be required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if ~~the district, special education local plan area, or county office~~ *local educational agency* made a free appropriate public education available to the child and the parent of the child elected to place the child in the private school or facility.

1 SEC. 29. Section 56174.5 of the Education Code is amended
2 to read:

3 56174.5. (a) Private school individuals with exceptional needs
4 may receive a different amount of services than individuals with
5 exceptional needs in public school receive pursuant to ~~paragraph~~
6 ~~(2) of subsection (a) of Section 300.455~~ *Section 300.138(a)(2)* of
7 Title 34 of the Code of Federal Regulations. No private school
8 individuals with exceptional needs is entitled to any amount of
9 service the child would receive if enrolled in a public school
10 pursuant to ~~paragraph (3) of subsection (a) of Section 300.455~~
11 *Section 300.137(a)* of Title 34 of the Code of Federal Regulations.

12 (b) Decisions about the services provided to private school
13 individuals with exceptional needs pursuant to this article shall be
14 made pursuant to this section and Sections ~~300.454, 300.455, and~~
15 ~~300.456~~ *300.137 to 300.139, inclusive*, of Title 34 of the Code of
16 Federal Regulations.

17 SEC. 30. Section 56175 of the Education Code is amended to
18 read:

19 56175. If a parent or guardian of an individual with exceptional
20 needs, who previously received special education and related
21 services under the authority of the local educational agency, enrolls
22 the child in a private elementary or secondary school without the
23 consent of or referral by the local educational agency, a court or
24 a due process hearing officer may require the local educational
25 agency to reimburse the parent or guardian for the cost of that
26 enrollment if the court or due process hearing officer finds that
27 the local educational agency had not made a free appropriate public
28 education available to the child in a timely manner prior to that
29 enrollment in the private elementary or secondary school and that
30 the private placement is appropriate, in accordance with ~~clause (ii)~~
31 ~~of subparagraph (C) of paragraph (10) of subsection (a) of Section~~
32 ~~1412~~ *Section 1412(a)(10)(C)(ii)* of Title 20 of the United States
33 Code and ~~subsection (c) of Section 300.403~~ *Section 300.148(c)* of
34 Title 34 of the Code of Federal Regulations.

35 SEC. 31. Section 56194 of the Education Code is amended to
36 read:

37 56194. The community advisory committee shall have the
38 authority and fulfill the responsibilities that are defined for it in
39 the local plan. The responsibilities shall include, but need not be
40 limited to, all the following:

1 (a) Advising the policy and administrative entity of the ~~district,~~
2 special education local plan area, ~~or county office,~~ regarding the
3 development, amendment, and review of the local plan. The entity
4 shall review and consider comments from the community advisory
5 committee.

6 (b) Recommending annual priorities to be addressed by the plan.

7 (c) Assisting in parent education and in recruiting parents and
8 other volunteers who may contribute to the implementation of the
9 plan.

10 (d) Encouraging community involvement in the development
11 and review of the local plan.

12 (e) Supporting activities on behalf of individuals with
13 exceptional needs.

14 (f) Assisting in parent awareness of the importance of regular
15 school attendance.

16 SEC. 32. Section 56205 of the Education Code is amended to
17 read:

18 56205. (a) Each special education local plan area submitting
19 a local plan to the Superintendent under this part shall assure, in
20 conformity with ~~subsection (a) of Section 1412~~ *Section 1412(a)*
21 ~~of, and paragraph (1) of subsection (a) of Section 1413~~ *Section*
22 *1413(a)(1) of Title 20 of the United States Code, and in accordance*
23 *with Section 300.201 of Title 34 of the Code of Federal Regulations*
24 *that it has in effect policies, procedures, and programs that are*
25 *consistent with state laws, regulations, and policies governing the*
26 *following:*

27 (1) Free appropriate public education.

28 (2) Full educational opportunity.

29 (3) Child find and referral.

30 (4) Individualized education programs, including development,
31 implementation, review, and revision.

32 (5) Least restrictive environment.

33 (6) Procedural safeguards.

34 (7) Annual and triennial assessments.

35 (8) Confidentiality.

36 (9) Transition from Subchapter III (commencing with Section
37 1431) of Title 20 of the United States Code to the preschool
38 program.

39 (10) Children in private schools.

1 (11) Compliance assurances, including general compliance with
2 the federal Individuals with Disabilities Education Act (20 U.S.C.
3 Sec. 1400 et seq.), Section 504 of the *federal* Rehabilitation Act
4 of 1973 (29 U.S.C. Sec. 794), the federal Americans with
5 Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal
6 regulations relating thereto, and this part.

7 (12) (A) A description of the governance and administration
8 of the plan, including identification of the governing body of a
9 multidistrict plan or the individual responsible for administration
10 in a single district plan, and of the elected officials to whom the
11 governing body or individual is responsible.

12 (B) A description of the regionalized operations and services
13 listed in Section 56836.23 and the direct instructional support
14 provided by program specialists in accordance with Section 56368
15 to be provided through the plan.

16 (C) Verification that a community advisory committee has been
17 established pursuant to Section 56190.

18 (D) Multidistrict plans, submitted pursuant to subdivision (b)
19 or (c) of Section 56195.1, shall do the following:

20 (i) Specify the responsibilities of each participating county office
21 and district governing board in the policymaking process, the
22 responsibilities of the superintendents of each participating district
23 and county in the implementation of the plan, and the
24 responsibilities of district and county administrators of special
25 education in coordinating the administration of the local plan.

26 (ii) Identify the respective roles of the administrative unit and
27 the administrator of the special education local plan area and the
28 individual local educational agencies within the special education
29 local plan area in relation to the following:

30 (I) The hiring, supervision, evaluation, and discipline of the
31 administrator of the special education local plan area and staff
32 employed by the administrative unit in support of the local plan.

33 (II) The allocation from the state of federal and state funds to
34 the special education local plan area administrative unit or to local
35 educational agencies within the special education local plan area.

36 (III) The operation of special education programs.

37 (IV) Monitoring the appropriate use of federal, state, and local
38 funds allocated for special education programs.

39 (V) The preparation of program and fiscal reports required of
40 the special education local plan area by the state.

(iii) Include copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(E) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9, and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special education and regular education teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(13) Personnel qualifications to ensure that personnel, including special education teachers and personnel and paraprofessionals providing related services, necessary to implement this part are appropriately and adequately prepared and trained in accordance with ~~paragraph (14) of subsection (a) of Section 1412, Sections 1412(a)(14) and paragraph (3) of subsection (a) of Section 1413, 1413(a)(3)~~ of Title 20 of the United States Code.

(14) Performance goals and indicators.

(15) Participation in state and districtwide assessments, including assessments described under Section 1111 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.) and alternate assessments in accordance with ~~paragraph (16) of subsection (a) of Section 1412 Section 1412(a)(16)~~ of Title 20 of the United States Code, and reports relating to assessments.

(16) Supplementation of state, local, and other federal funds, including nonsupplantation of funds.

(17) Maintenance of financial effort.

(18) Opportunities for public participation prior to adoption of policies and procedures.

(19) Suspension and expulsion rates.

(20) Access to instructional materials by blind individuals with exceptional needs and others with print disabilities in accordance with ~~paragraph (23) of subsection (a) of Section 1412 Section 1412(a)(23)~~ of Title 20 of the United States Code.

(21) Overidentification and disproportionate representation by race and ethnicity of children as individuals with exceptional needs, including children with disabilities with a particular impairment described in Section 1401 of Title 20 of the United States Code and in accordance with ~~paragraph (24) of subsection (a) of Section 1412~~ *Section 1412(a)(24)* of Title 20 of the United States Code.

(22) Prohibition of mandatory medication use pursuant to Section 56040.5 and in accordance with ~~paragraph (25) of subsection (a) of Section 1412~~ *Section 1412(a)(25)* of Title 20 of the United States Code.

(b) Each local plan submitted to the Superintendent under this part shall also contain all the following:

(1) An annual budget plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraphs (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual budget plan shall identify expected expenditures for all items required by this part which shall include, but not be limited to, the following:

(A) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(B) Administrative costs of the plan.

(C) Special education services to pupils with severe disabilities and low incidence disabilities.

(D) Special education services to pupils with nonsevere disabilities.

(E) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(F) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(G) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(2) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each district in the special education local plan area at least 15 days prior to the hearing. The annual service plan

1 may be revised during any fiscal year according to the
2 policymaking process established pursuant to subparagraphs (D)
3 and (E) of paragraph (12) of subdivision (a) and consistent with
4 subdivision (f) of Section 56001 and with Section 56195.9. The
5 annual service plan shall include a description of services to be
6 provided by each district and county office, including the nature
7 of the services and the physical location at which the services will
8 be provided, including alternative schools, charter schools,
9 opportunity schools and classes, community day schools operated
10 by districts, community schools operated by county offices, and
11 juvenile court schools, regardless of whether the district or county
12 office is participating in the local plan. This description shall
13 demonstrate that all individuals with exceptional needs shall have
14 access to services and instruction appropriate to meet their needs
15 as specified in their individualized education programs.

16 (3) A description of programs for early childhood special
17 education from birth through five years of age.

18 (4) A description of the method by which members of the public,
19 including parents or guardians of individuals with exceptional
20 needs who are receiving services under the plan, may address
21 questions or concerns to the governing body or individual identified
22 in subparagraph (A) of paragraph (12) of subdivision (a).

23 (5) A description of a dispute resolution process, including
24 mediation and final and binding arbitration to resolve disputes
25 over the distribution of funding, the responsibility for service
26 provision, and the other governance activities specified within the
27 plan.

28 (6) Verification that the plan has been reviewed by the
29 community advisory committee and that the committee had at least
30 30 days to conduct this review prior to submission of the plan to
31 the Superintendent.

32 (7) A description of the process being utilized to meet the
33 requirements of Section 56303.

34 (c) A description of the process being utilized to oversee and
35 evaluate placements in nonpublic, nonsectarian schools and the
36 method of ensuring that all requirements of each pupil's
37 individualized education program are being met. The description
38 shall include a method for evaluating whether the pupil is making
39 appropriate educational progress.

(d) The local plan, budget plan, and annual service plan shall be written in language that is understandable to the general public.

SEC. 33. Section 56240 of the Education Code is amended to read:

56240. Staff development programs shall be provided for regular and special education teachers, administrators, certificated and classified employees, volunteers, community advisory committee members and, as appropriate, members of the district and county governing boards. The programs shall be coordinated with other staff development programs in the ~~district~~, special education local plan area, ~~or county office~~, including school level staff development programs authorized by state and federal law.

SEC. 34. Section 56243 of the Education Code is amended to read:

56243. It is the intent of the Legislature, pursuant to this article, that ~~each district, special education local plan area, and county office~~ *a local educational agency* provide regular classroom teachers serving individuals with exceptional needs appropriate training each year relating to the needs of those individuals.

SEC. 35. Section 56245 of the Education Code is amended to read:

56245. The Legislature encourages the inclusion, in local in-service training programs for regular education teachers and special education teachers ~~in school districts, special education local plan areas, and county offices of education~~ *local educational agencies*, of a component on the recognition of, and teaching strategies for, specific learning disabilities, including dyslexia and related disorders.

SEC. 36. Section 56300 of the Education Code is amended to read:

56300. ~~Each district, special education local plan area, or county office~~ *A local educational agency* shall actively and systematically seek out all individuals with exceptional needs, ~~ages 0 through 21 years from birth through 21 years of age~~, including children not enrolled in public school programs, who reside ~~in the district or are under the jurisdiction of a special education local plan area or a county office~~ *the local educational agency*.

SEC. 37. Section 56302 of the Education Code is amended to read:

1 56302. ~~Each district, special education local plan area, or~~
2 ~~county office~~ *A local educational agency* shall provide for the
3 identification and assessment of ~~an individual's~~ *the* exceptional
4 needs *of an individual*, and the planning of an instructional program
5 to meet the assessed needs. Identification procedures shall include
6 systematic methods of utilizing referrals of pupils from teachers,
7 parents, agencies, appropriate professional persons, and from other
8 members of the public. Identification procedures shall be
9 coordinated with school site procedures for referral of pupils with
10 needs that cannot be met with modification of the regular
11 instructional program.

12 SEC. 38. Section 56320 of the Education Code is amended to
13 read:

14 56320. Before any action is taken with respect to the initial
15 placement of an individual with exceptional needs in special
16 education instruction, an individual assessment of the pupil's
17 educational needs shall be conducted, by qualified persons, in
18 accordance with requirements including, but not limited to, all the
19 following:

20 (a) Testing and assessment materials and procedures used for
21 the purposes of assessment and placement of individuals with
22 exceptional needs are selected and administered so as not to be
23 racially, culturally, or sexually discriminatory. Pursuant to
24 ~~subparagraph (B) of paragraph (6) of subsection (a) of Section~~
25 ~~1412~~ *Section 1412(a)(6)(B)* of Title 20 of the United States Code,
26 the materials and procedures shall be provided in the pupil's native
27 language or mode of communication, unless it is clearly not
28 feasible to do so.

29 (b) Tests and other assessment materials meet all the following
30 requirements:

31 (1) Are provided and administered in the language and form
32 most likely to yield accurate information on what the pupil knows
33 and can do academically, developmentally, and functionally, unless
34 it is not feasible to so provide or administer as required by ~~clause~~
35 ~~(ii) of subparagraph (A) of paragraph (3) of subsection (b) of~~
36 ~~Section 1414~~ *Section 1414(b)(3)(A)(ii)* of Title 20 of the United
37 States Code.

38 (2) Are used for purposes for which the assessments or measures
39 are valid and reliable.

1 (3) Are administered by trained and knowledgeable personnel
2 and are administered in accordance with any instructions provided
3 by the producer of the assessments, except that individually
4 administered tests of intellectual or emotional functioning shall
5 be administered by a credentialed school psychologist.

6 (c) Tests and other assessment materials include those tailored
7 to assess specific areas of educational need and not merely those
8 ~~which~~ *that* are designed to provide a single general intelligence
9 quotient.

10 (d) Tests are selected and administered to best ensure that when
11 a test administered to a pupil with impaired sensory, manual, or
12 speaking skills produces test results that accurately reflect the
13 pupil's aptitude, achievement level, or any other factors the test
14 purports to measure and not the pupil's impaired sensory, manual,
15 or speaking skills unless those skills are the factors the test purports
16 to measure.

17 (e) Pursuant to ~~subparagraph (B) of paragraph (2) of subsection~~
18 ~~(b) of Section 1414~~ *Section 1414(b)(2)(B)* of Title 20 of the United
19 States Code, no single measure or assessment is used as the sole
20 criterion for determining whether a pupil is an individual with
21 exceptional needs or determining an appropriate educational
22 program for the pupil.

23 (f) The pupil is assessed in all areas related to the suspected
24 disability including, if appropriate, health and development, vision,
25 including low vision, hearing, motor abilities, language function,
26 general intelligence, academic performance, communicative status,
27 self-help, orientation and mobility skills, career and vocational
28 abilities and interests, and social and emotional status. A
29 developmental history shall be obtained, when appropriate. For
30 pupils with residual vision, a low vision assessment shall be
31 provided in accordance with guidelines established pursuant to
32 Section 56136. In assessing each pupil under this article, the
33 assessment shall be conducted in accordance with ~~subsections (h),~~
34 ~~(i), and (j) of Section 300.532~~ *Sections 300.304 and 300.305* of
35 Title 34 of the Code of Federal Regulations.

36 (g) The assessment of a pupil, including the assessment of a
37 pupil with a suspected low incidence disability, shall be conducted
38 by persons knowledgeable of that disability. Special attention shall
39 be given to the unique educational needs, including, but not limited
40 to, skills and the need for specialized services, materials, and

1 equipment consistent with guidelines established pursuant to
2 Section 56136.

3 (h) As part of an initial assessment, if appropriate, and as part
4 of any reassessment under Part B of the federal Individuals with
5 Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and this
6 part, the group that includes members of the individualized
7 education program team, and other qualified professionals, as
8 appropriate, shall follow the procedures specified in ~~subsection~~
9 ~~(e) of Section 1414~~ *Section 1414(c)* of Title 20 of the United States
10 Code. The group may conduct its review without a meeting.

11 (i) Each local educational agency shall ensure that assessments
12 of individuals with exceptional needs who transfer from one district
13 to another district in the same academic year are coordinated with
14 the individual's prior and subsequent schools, as necessary and as
15 expeditiously as possible, in accordance with ~~subparagraph (D) of~~
16 ~~paragraph (3) of subsection (b) of Section 1414~~ *Section*
17 *1414(b)(3)(D)* of Title 20 of the United States Code, to ensure
18 prompt completion of full assessment.

19 SEC. 39. Section 56321.5 of the Education Code is amended
20 to read:

21 56321.5. The copy of the notice of parent rights shall include
22 the right to electronically record the proceedings of individualized
23 education program *team* meetings as specified in *subdivision (g)*
24 *of Section 56341* ~~56341.1~~.

25 SEC. 40. Section 56322 of the Education Code is amended to
26 read:

27 56322. The assessment shall be conducted by persons
28 competent to perform the assessment, as determined by the ~~school~~
29 ~~district, county office, or special education local plan area~~ *local*
30 *educational agency*.

31 SEC. 41. Section 56328 of the Education Code is amended to
32 read:

33 56328. Notwithstanding the provisions of this chapter, a ~~district,~~
34 ~~special education local plan area, or county office~~ may utilize a
35 school site level and a regional level service, as provided for under
36 Section 56336.2 as it read immediately prior to the operative date
37 of this section, to provide the services required by this chapter.

38 SEC. 42. Section 56330 of the Education Code is amended to
39 read:

1 ~~56330. Each district, special education local plan area, or~~
2 ~~county office of education~~ *A local educational agency* shall follow
3 the procedures in Section ~~300.535~~ *300.306(c)* of Title 34 of the
4 Code of Federal Regulations when interpreting assessment data
5 for the purpose of determining if a child is an individual with
6 exceptional needs under Section 56026.

7 SEC. 43. Section 56331 of the Education Code is amended to
8 read:

9 56331. (a) A pupil who is suspected of needing mental health
10 services may be referred to a community mental health service in
11 accordance with Section 7576 of the Government Code.

12 (b) Prior to referring a pupil to a county mental health agency
13 for services, the local educational agency shall follow the
14 procedures set forth in Section 56320 and conduct an assessment
15 in accordance with Sections ~~300.530 to 300.536~~ *300.301 to*
16 *300.306*, inclusive, of Title 34 of the Code of Federal Regulations.
17 If an individual with exceptional needs is identified as potentially
18 requiring mental health services, the local educational agency shall
19 request the participation of the county mental health agency in the
20 individualized education program. A local educational agency
21 shall provide any specially-designed instruction required by an
22 individualized education program, including related services such
23 as counseling services, parent counseling and training,
24 psychological services, or social work services in schools as
25 defined in Section ~~300.24~~ *300.34* of Title 34 of the Code of Federal
26 Regulations. If the individualized education program of an
27 individual with exceptional needs includes a functional behavioral
28 assessment and behavior intervention plan, in accordance with
29 Section ~~300.520~~ *300.530* of Title 34 of the Code of Federal
30 Regulations, the local educational agency shall provide
31 documentation upon referral to a county mental health agency.
32 Local educational agencies shall provide related services, by
33 qualified personnel, ~~as defined by Section 300.23 of Title 34 of~~
34 ~~the Code of Federal Regulations~~, unless the individualized
35 education program team designates a more appropriate agency for
36 the provision of services. Local educational agencies and
37 community mental health services shall work collaboratively to
38 ensure that assessments performed prior to referral are as useful
39 as possible to the community mental health service in determining
40 the need for mental health services and the level of services needed.

1 SEC. 44. Section 56340 of the Education Code is amended to
2 read:

3 ~~56340. Each district, special education local plan area, or~~
4 ~~county office~~ *A local educational agency* shall initiate and conduct
5 meetings for the purposes of developing, reviewing, and revising
6 the individualized education program of each individual with
7 exceptional needs in accordance with ~~paragraph (2) of subsection~~
8 ~~(b) of Section 300.343~~ *Section 300.323(c)* of Title 34 of the Code
9 of Federal Regulations.

10 SEC. 45. Section 56341.1 of the Education Code is amended
11 to read:

12 56341.1. (a) When developing each pupil's individualized
13 education program, the individualized education program team
14 shall consider the following:

15 (1) The strengths of the pupil.

16 (2) The concerns of the parents or guardians for enhancing the
17 education of the pupil.

18 (3) The results of the initial assessment or most recent
19 assessment of the pupil.

20 (4) The academic, developmental, and functional needs of the
21 child.

22 (b) The individualized education program team shall do the
23 following:

24 (1) In the case of a pupil whose behavior impedes his or her
25 learning or that of others, consider the use of positive behavioral
26 interventions and supports, and other strategies, to address that
27 behavior.

28 (2) In the case of a pupil with limited-English proficiency,
29 consider the language needs of the pupil as those needs relate to
30 the pupil's individualized education program.

31 (3) In the case of a pupil who is blind or visually impaired,
32 provide for instruction in braille, and the use of braille, unless the
33 individualized education program team determines, after an
34 assessment of the pupil's reading and writing skills, needs, and
35 appropriate reading and writing media, including an assessment
36 of the pupil's future needs for instruction in braille or the use of
37 braille, that instruction in braille or the use of braille is not
38 appropriate for the pupil.

39 (4) Consider the communication needs of the pupil, and in the
40 case of a pupil who is deaf or hard of hearing, consider the pupil's

1 language and communication needs, opportunities for direct
2 communications with peers and professional personnel in the
3 pupil's language and communication mode, academic level, and
4 full range of needs, including opportunities for direct instruction
5 in the pupil's language and communication mode.

6 (5) Consider whether the pupil requires assistive technology
7 devices and services as defined in ~~paragraphs (1) and (2) of Section~~
8 ~~1401~~ *Section 1401(1) and (2)* of Title 20 of the United States Code.

9 (c) If, in considering the special factors described in subdivisions
10 (a) and (b), the individualized education program team determines
11 that a pupil needs a particular device or service, including an
12 intervention, accommodation, or other program modification, in
13 order for the pupil to receive a free appropriate public education,
14 the individualized education program team shall include a statement
15 to that effect in the pupil's individualized education program.

16 (d) The individualized education program team shall review the
17 pupil's individualized education program periodically, but not less
18 frequently than annually, to determine whether the annual goals
19 for the pupil are being achieved, and revise the individualized
20 education program, as appropriate, to address among other matters
21 the following:

22 (1) Any lack of expected progress toward the annual goals and
23 in the general *education* curriculum, where appropriate.

24 (2) The results of any reassessment conducted pursuant to
25 Section 56381.

26 (3) Information about the pupil provided to, or by, the parents
27 or guardians, as described in subdivision (b) of Section 56381.

28 (4) The pupil's anticipated needs.

29 (5) Any other relevant matter.

30 (e) A regular education teacher of the pupil, who is a member
31 of the individualized education program team, shall participate in
32 the review and revision of the individualized education program
33 of the pupil consistent with ~~subparagraph (C) of paragraph (1) of~~
34 ~~subsection (d) of Section 1414~~ *Section 1414(d)(1)(C)* of Title 20
35 of the United States Code.

36 (f) The parent or guardian shall have the right to present
37 information to the individualized education program team in person
38 or through a representative and the right to participate in meetings,
39 relating to eligibility for special education and related services,
40 recommendations, and program planning.

(g) (1) Notwithstanding Section 632 of the Penal Code, the parent or guardian, or local educational agency shall have the right to record electronically the proceedings of individualized education program team meetings on an audiotape recorder. The parent or guardian, or local educational agency shall notify the members of the individualized education program team of their intent to record a meeting at least 24 hours prior to the meeting. If the local educational agency initiates the notice of intent to audiotape record a meeting and the parent or guardian objects or refuses to attend the meeting because it will be tape recorded, the meeting shall not be recorded on an audiotape recorder.

(2) The Legislature hereby finds as follows:

(A) Under federal law, audiotape recordings made by a local educational agency are subject to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), and are subject to the confidentiality requirements of the regulations under Sections ~~300.560 to 300.575~~ 300.610 to 300.626, inclusive, of Part 34 of the Code of Federal Regulations.

(B) Parents or guardians have the right, pursuant to Sections 99.10 to 99.22, inclusive, of Title 34 of the Code of Federal Regulations, to do all of the following:

(i) Inspect and review the tape recordings.

(ii) Request that the tape recordings be amended if the parent or guardian believes that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the individual with exceptional needs.

(iii) Challenge, in a hearing, information that the parent or guardian believes is inaccurate, misleading, or in violation of the individual's rights of privacy or other rights.

(h) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs.

SEC. 46. Section 56342 of the Education Code is amended to read:

56342. (a) The individualized education program team shall review the assessment results, determine eligibility, determine the content of the individualized education program, consider local transportation policies and criteria developed pursuant to paragraph

1 (5) of subdivision (b) of Section 56195.8, and make program
2 placement recommendations.

3 (b) In determining the program placement of an individual with
4 exceptional needs, ~~each district, special education local plan area,~~
5 ~~or county office~~ *a local educational agency* shall ensure that the
6 placement decisions and the child's placement are made in
7 accordance with Sections ~~300.550 to 300.554~~ *300.114 to 300.118*,
8 inclusive, of Title 34 of the Code of Federal Regulations.

9 SEC. 47. Section 56342.1 of the Education Code is amended
10 to read:

11 56342.1. Before a ~~district, special education local plan area,~~
12 ~~or county office~~ *local educational agency* places an individual
13 with exceptional needs in, or refers an individual to, a nonpublic,
14 nonsectarian school pursuant to Section 56365, the district, special
15 education local plan area, or county office shall initiate and conduct
16 a meeting to develop an individualized education program in
17 accordance with Sections 56341.1 and 56345 in accordance with
18 ~~paragraphs (1) and (2) of subsection (a) of Section 300.349~~ *Section*
19 *300.325(a)(1) and (2) of Title 34 of the Code of Federal*
20 *Regulations.*

21 SEC. 48. Section 56342.5 of the Education Code is amended
22 to read:

23 56342.5. ~~Each district, special education local plan area, or~~
24 ~~county office~~ *A local educational agency* shall ensure that the
25 parent of each individual with exceptional needs is a member of
26 any group that makes decisions on the educational placement of
27 the individual with exceptional needs.

28 SEC. 49. Section 56343.5 of the Education Code is amended
29 to read:

30 56343.5. A meeting of an individualized education program
31 team requested by a parent to review an individualized education
32 program pursuant to subdivision (c) of Section 56343 shall be held
33 within 30 days, not counting days between the pupil's regular
34 school sessions, terms, or days of school vacation in excess of five
35 schooldays, from the date of receipt of the parent's written request.
36 If a parent makes an oral request, ~~the school district~~ *local*
37 *educational agency* shall notify the parent of the need for a written
38 request and the procedure for filing a written request.

39 SEC. 50. Section 56345.5 of the Education Code is amended
40 to read:

1 56345.5. Except as prescribed in subdivision (b) of Section
2 56324, nothing in this part shall be construed to authorize ~~districts,~~
3 ~~special education local plan areas, or county offices~~ *local*
4 *educational agencies* to prescribe health care services.

5 SEC. 51. Section 56347 of the Education Code is amended to
6 read:

7 ~~56347. Each district, special education local plan area, or~~
8 ~~county office~~ *A local educational agency* shall, prior to the
9 placement of the individual with exceptional needs, ensure that
10 the regular teacher or teachers, the special education teacher or
11 teachers, and other persons who provide special education, related
12 services, or both to the individual with exceptional needs have
13 access to the pupil's individualized education program, shall be
14 knowledgeable of the content of the individualized education
15 program, and shall be informed of his or her specific
16 responsibilities related to implementing a pupil's individualized
17 education program and the specific accommodations, modifications
18 and supports that shall be provided for the pupil in accordance
19 with the individualized education program, pursuant to ~~paragraphs~~
20 ~~(2) and (3) of subsection (b) of Section 300.342~~ *Section 300.323(d)*
21 of Title 34 of the Code of Federal Regulations. A copy of each
22 individualized education program shall be maintained at each
23 schoolsite where the pupil is enrolled. Service providers from other
24 agencies who provide instruction or a related service to the
25 individual off the schoolsite shall be provided a copy of the
26 individualized education program. All individualized education
27 programs shall be maintained in accordance with state and federal
28 pupil record confidentiality laws.

29 SEC. 52. Section 56351 of the Education Code is amended to
30 read:

31 ~~56351. School districts, special education local plan areas, or~~
32 ~~county offices of education~~ *Local educational agencies* shall
33 provide opportunities for braille instruction for pupils who, due to
34 a prognosis of visual deterioration, may be expected to have a need
35 for braille as a reading medium.

36 SEC. 53. Section 56351.5 of the Education Code is amended
37 to read:

38 56351.5. (a) (1) ~~A school district, special education local plan~~
39 ~~area, or county office of education~~ *local educational agency* may
40 reinforce braille instruction using a braille instructional aide who

1 meets the criteria set forth in paragraph (2) under the supervision
2 of a teacher who holds an appropriate credential, as determined
3 by the Commission on Teacher Credentialing, to teach pupils who
4 are functionally blind or visually impaired. This instruction shall
5 be in accordance with the pupil's individualized education program.

6 (2) For purposes of this section, a braille instructional aide shall
7 demonstrate to the supervising teacher that he or she is fluent in
8 reading and writing grade 2 braille and possesses basic knowledge
9 of the rules of braille construction.

10 (b) ~~Any school district, special education local plan area, or~~
11 ~~county office of education~~ *A local educational agency* that employs
12 a braille instructional aide shall provide the aide with information
13 regarding teaching credential programs, including the
14 Pre-Internship Teaching Program (Article 5.6 (commencing with
15 Section 44305) of Chapter 2 of Part 25), the Wildman-Keeley-Solis
16 Exemplary Teacher Training Act of 1997 (Article 12 (commencing
17 with Section 44390) of Chapter 2 of Part 25), and the Teacher
18 Education Internship Act of 1967 (Article 3 (commencing with
19 Section 44450) of Chapter 3 of Part 25).

20 SEC. 54. Section 56352 of the Education Code is amended to
21 read:

22 56352. (a) A functional vision assessment conducted pursuant
23 to Section 56320 shall be used as one criterion in determining the
24 appropriate reading medium or media for the pupil.

25 (b) An assessment of braille skills shall be required for
26 functionally blind pupils who have the ability to read in accordance
27 with guidelines established pursuant to Section 56136. ~~A school~~
28 ~~district, special education local plan area, or county office of~~
29 ~~education~~ *local educational agency* may provide pupils with low
30 vision with the opportunity to receive assessments to determine
31 the appropriate reading medium or media, including braille
32 instruction, for the pupils.

33 (c) The determination, by a pupil's individualized education
34 program team, of the most appropriate medium or media, including
35 braille, for functionally blind pupils who have the ability to read
36 shall use as one criterion the assessment provided for pursuant to
37 subdivision (b) and shall be in accordance with guidelines
38 established pursuant to Section 56136.

39 (d) Except as provided in subdivision (b) of Section 56351.5,
40 braille instruction shall be provided by a teacher who holds an

1 appropriate credential, as determined by the Commission on
2 Teacher Credentialing, to teach pupils who are functionally blind
3 or visually impaired.

4 (e) Each visually impaired pupil shall be provided with the
5 opportunity to receive an assessment to determine the appropriate
6 reading medium or media, including braille instruction, if
7 appropriate, for that pupil.

8 SEC. 55. Section 56361.5 of the Education Code is amended
9 to read:

10 56361.5. (a) In addition to the continuum of program options
11 listed in Section 56361, ~~a district, special education local plan area,~~
12 ~~or county office local educational agency~~ may contract with a
13 hospital to provide designated instruction and services, as defined
14 in subdivision (b) of Section 56363, required by the individual
15 with exceptional needs, as specified in the individualized education
16 program. However, ~~a district, special education local plan area, or~~
17 ~~county office local educational agency~~ of education may not
18 contract with a sectarian hospital for instructional services. A
19 ~~district, special education local plan area, or county office local~~
20 ~~educational agency~~ shall contract with a hospital for designated
21 instruction and services required by the individual with exceptional
22 needs only when no appropriate public education program is
23 available.

24 For the purposes of this section “hospital” means a health care
25 facility licensed by the State Department of Health *Care* Services.

26 (b) Contracts with hospitals pursuant to subdivision (a) shall be
27 subject to the procedures prescribed in Sections 56365, 56366,
28 and 56366.5.

29 SEC. 56. Section 56362 of the Education Code is amended to
30 read:

31 56362. (a) The resource specialist program shall provide, but
32 not be limited to, all of the following:

33 (1) Provision for a resource specialist or specialists who shall
34 provide instruction and services for those pupils whose needs have
35 been identified in an individualized education program developed
36 by the individualized education program team and who are assigned
37 to regular classroom teachers for a majority of a schoolday.

38 (2) Provision of information and assistance to individuals with
39 exceptional needs and their parents.

1 (3) Provision of consultation, resource information, and material
2 regarding individuals with exceptional needs to their parents and
3 to regular staff members.

4 (4) Coordination of special education services with the regular
5 school programs for each individual with exceptional needs
6 enrolled in the resource specialist program.

7 (5) Monitoring of pupil progress on a regular basis, participation
8 in the review and revision of individualized education programs,
9 as appropriate, and referral of pupils who do not demonstrate
10 appropriate progress to the individualized education program team.

11 (6) Emphasis at the secondary school level on academic
12 achievement, career and vocational development, and preparation
13 for adult life.

14 (b) The resource specialist program shall be under the direction
15 of a resource specialist who is a credentialed special education
16 teacher, or who has a clinical services credential with a special
17 class authorization, who has had three or more years of teaching
18 experience, including both regular and special education teaching
19 experience, as defined by rules and regulations of the Commission
20 on Teacher Credentialing and who has demonstrated the
21 competencies for a resource specialist, as established by the
22 Commission on Teacher Credentialing.

23 (c) Caseloads for resource specialists shall be stated in the local
24 policies developed pursuant to Section 56195.8 and in accordance
25 with regulations established by the board. No resource specialist
26 shall have a caseload which exceeds 28 pupils.

27 (d) Resource specialists shall not simultaneously be assigned
28 to serve as resource specialists and to teach regular classes.

29 ~~(e) Resource specialists shall not enroll a pupil for a majority~~
30 ~~of a schoolday without prior approval by the superintendent.~~

31 ~~(f)~~

32 (e) At least 80 percent of the resource specialists within a local
33 plan shall be provided with an instructional aide.

34 SEC. 57. Section 56363.1 of the Education Code is amended
35 to read:

36 56363.1. ~~A district, special education local plan area, or county~~
37 ~~office local educational agency~~ is not required to purchase medical
38 equipment for an individual pupil. However, the ~~school district,~~
39 ~~special education local plan area, or county office local educational~~
40 ~~agency~~ is responsible for providing other specialized equipment

1 for use at school that is needed to implement the individualized
2 education program. For purposes of this section, “medical
3 equipment” does not include an assistive technology device, as
4 defined in ~~paragraph (1) of Section 1401~~ *Section 1401(1)* of Title
5 20 of the United States Code.

6 SEC. 58. Section 56363.3 of the Education Code is amended
7 to read:

8 56363.3. The average caseload for language, speech, and
9 hearing specialists in ~~districts, county offices, or~~ special education
10 local plan areas shall not exceed 55 cases, unless the local
11 ~~comprehensive~~ plan specifies a higher average caseload and the
12 reasons for the greater average caseload.

13 SEC. 59. Section 56363.5 of the Education Code is amended
14 to read:

15 56363.5. ~~School districts, county offices of education, and~~
16 ~~special education local plan areas~~ *Local educational agencies* may
17 seek, either directly or through the pupil’s parents or guardians,
18 reimbursement from insurance companies to cover the costs of
19 related services, in accordance with ~~subsections (e) to (i), inclusive,~~
20 ~~of Section 300.142~~ *Section 300.154(d)-(h)* of the Code of Federal
21 Regulations.

22 SEC. 60. Section 56365 of the Education Code is amended to
23 read:

24 56365. (a) Services provided by nonpublic, nonsectarian
25 schools, as defined pursuant to Section 56034, and nonpublic,
26 nonsectarian agencies, as defined pursuant to Section 56035, shall
27 be available. These services shall be provided pursuant to Section
28 56366, and in accordance with ~~Section 300.401~~ *300.146* of Title
29 34 of the Code of Federal Regulations, under contract with the
30 ~~district, special education local plan area, or county office~~ *local*
31 *educational agency* to provide the appropriate special educational
32 facilities, special education, or designated instruction and services
33 required by the individual with exceptional needs if no appropriate
34 public education program is available.

35 (b) Pupils enrolled in nonpublic, nonsectarian schools and
36 agencies under this section shall be deemed to be enrolled in public
37 schools for all purposes of Chapter 4 (commencing with Section
38 41600) of Part 24 and Section 42238. ~~The district, special education~~
39 ~~local plan area, or county office~~ *local educational agency* shall be
40 eligible to receive allowances under ~~Chapter 7.2~~ *Articles 3*

1 (commencing with Section ~~56836~~ 56836.165) and (commencing
2 with Section 56836.20) of Chapter 7.2 for services that are provided
3 to individuals with exceptional needs pursuant to the contract.

4 (c) If the state participates in the federal program of assistance
5 for state-operated or state-supported programs for individuals with
6 exceptional needs (P.L. 89-313, Sec. 6), pupils enrolled in
7 nonpublic, nonsectarian schools shall be deemed to be enrolled in
8 state-supported institutions for all purposes of that program and
9 shall be eligible to receive allowances under Chapter 7.2
10 (commencing with Section 56836) for supplemental services
11 provided to individuals with exceptional needs pursuant to a
12 contract with a ~~district, special education local plan area, or county~~
13 ~~office of education~~ local educational agency. In order to participate
14 in the federal program, the state shall find that participation will
15 not result in any additional expenditures from the General Fund.

16 (d) The ~~district, special education local plan area, or county~~
17 ~~office~~ local educational agency shall pay to the nonpublic,
18 nonsectarian school or agency the full amount of the tuition for
19 individuals with exceptional needs that are enrolled in programs
20 provided by the nonpublic, nonsectarian school pursuant to the
21 contract.

22 (e) Before contracting with a nonpublic, nonsectarian school or
23 agency outside of this state, the ~~district, special education local~~
24 ~~plan area, or county office~~ local educational agency shall document
25 its efforts to utilize public schools or to locate an appropriate
26 nonpublic, nonsectarian school or agency program, or both, within
27 the state.

28 (f) If a ~~district, special education local plan area, or county office~~
29 local educational agency places a pupil with a nonpublic,
30 nonsectarian school or agency outside of this state, the pupil's
31 individualized education program team shall submit a report to
32 the ~~superintendent~~ Superintendent within 15 days of the placement
33 decision. The report shall include information about the special
34 education and related services provided by the out-of-state program
35 placement and the costs of the special education and related
36 services provided, and shall indicate the efforts of the local
37 educational agency to locate an appropriate public school or
38 nonpublic, nonsectarian school or agency, or a combination thereof,
39 within the state. The ~~superintendent~~ Superintendent shall submit

1 a report to the ~~State Board of Education~~ *board* on all placements
2 made outside of this state.

3 (g) ~~If a school district, special education local plan area, or~~
4 ~~county office of education~~ *local educational agency* decides to
5 place a pupil with a nonpublic, nonsectarian school or agency
6 outside of this state, that local educational agency shall indicate
7 the anticipated date for the return of the pupil to a public or
8 nonpublic, nonsectarian school or agency placement, or a
9 combination thereof, located in the state and shall document efforts
10 during the previous placement year to return the pupil.

11 (h) In addition to meeting the requirements of Section 56366.1,
12 a nonpublic, nonsectarian school or agency that operates a program
13 outside of this state shall be certified or licensed by that state to
14 provide, respectively, special education and related services and
15 designated instruction and related services to pupils under the
16 *federal* Individuals with Disabilities Education Act (20 U.S.C.
17 Sec. 1400 et seq.).

18 (i) A nonpublic, nonsectarian school or agency that is located
19 outside of this state is eligible for certification pursuant to Section
20 56366.1 only if a pupil is enrolled in a program operated by that
21 school or agency pursuant to the recommendation of an
22 individualized education program team in California, and if that
23 pupil's parents or guardians reside in California.

24 (j) ~~In accordance with subsections (b) and (c) of Section 300.402~~
25 ~~Section 300.147(b) and (c) of Title 34 of the Code of Federal~~
26 ~~Regulations, the department shall disseminate copies of applicable~~
27 ~~standards to each nonpublic, nonsectarian school and nonpublic,~~
28 ~~nonsectarian agency to which a district, special education local~~
29 ~~plan area, or county office~~ *local educational agency* has referred
30 or placed an individual with exceptional needs and shall provide
31 an opportunity for those nonpublic, nonsectarian schools and
32 nonpublic, nonsectarian agencies to participate in the development
33 and revision of state standards that apply to those entities.

34 SEC. 61. Section 56366.1 of the Education Code is amended
35 to read:

36 56366.1. (a) A nonpublic, nonsectarian school or agency that
37 seeks certification shall file an application with the Superintendent
38 on forms provided by the department and include the following
39 information on the application:

1 (1) A description of the special education and designated
2 instruction and services provided to individuals with exceptional
3 needs if the application is for nonpublic, nonsectarian school
4 certification.

5 (2) A description of the designated instruction and services
6 provided to individuals with exceptional needs if the application
7 is for nonpublic, nonsectarian agency certification.

8 (3) A list of appropriately qualified staff, a description of the
9 credential, license, or registration that qualifies each staff member
10 rendering special education or designated instruction and services
11 to do so, and copies of their credentials, licenses, or certificates of
12 registration with the appropriate state or national organization that
13 has established standards for the service rendered.

14 (4) An annual operating budget.

15 (5) Affidavits and assurances necessary to comply with all
16 applicable federal, state, and local laws and regulations ~~which~~ *that*
17 include criminal record summaries required of all nonpublic school
18 or agency personnel having contact with minor children under
19 Section 44237.

20 (b) (1) The applicant shall provide the special education local
21 plan area in which the applicant is located with the written
22 notification of its intent to seek certification or renewal of its
23 certification. The applicant shall submit on a form, developed by
24 the department, a signed verification by local educational agency
25 representatives that they have been notified of the intent to certify
26 or renew certification. The verification shall include a statement
27 that representatives of the local educational agency for the area in
28 which the applicant is located have had the opportunity to review
29 the application at least 60 calendar days prior to submission of an
30 initial application to the Superintendent, or at least 30 calendar
31 days prior to submission of a renewal application to the
32 Superintendent. The signed verification shall provide assurances
33 that local educational agency representatives have had the
34 opportunity to provide input on all required components of the
35 application.

36 (2) If the applicant has not received a response from the local
37 educational agency 60 calendar days from the date of the return
38 receipt for initial applications or 30 calendar days from the date
39 of the return receipt for renewal applications, the applicant may
40 file the application with the Superintendent. A copy of the return

1 receipt shall be included with the application as verification of
2 notification efforts to the local educational agency.

3 (3) The department shall mail renewal application materials to
4 certified nonpublic, nonsectarian schools and agencies at least 120
5 days prior to the date their current certification expires.

6 (c) If the applicant operates a facility or program on more than
7 one site, each site shall be certified.

8 (d) If the applicant is part of a larger program or facility on the
9 same site, the Superintendent shall consider the effect of the total
10 program on the applicant. A copy of the policies and standards for
11 the nonpublic, nonsectarian school or agency and the larger
12 program shall be available to the Superintendent.

13 (e) Prior to certification, the Superintendent shall conduct an
14 onsite review of the facility and program for which the applicant
15 seeks certification. The Superintendent may be assisted by
16 representatives of the special education local plan area in which
17 the applicant is located and a nonpublic, nonsectarian school or
18 agency representative who does not have a conflict of interest with
19 the applicant. The Superintendent shall conduct an additional onsite
20 review of the facility and program within three years of the
21 effective date of the certification, unless the Superintendent
22 conditionally certifies the school or agency or unless the
23 Superintendent receives a formal complaint against the school or
24 agency. In the latter two cases, the Superintendent shall conduct
25 an onsite review at least annually.

26 (f) The Superintendent shall make a determination on an
27 application within 120 days of receipt of the application and shall
28 certify, conditionally certify, or deny certification to the applicant.
29 If the Superintendent fails to take one of these actions within 120
30 days, the applicant is automatically granted conditional certification
31 for a period terminating on August 31, of the current school year.
32 If certification is denied, the Superintendent shall provide reasons
33 for the denial. The Superintendent may certify the school or agency
34 for a period of not longer than one year.

35 (g) Certification becomes effective on the date the nonpublic,
36 nonsectarian school or agency meets all the application
37 requirements and is approved by the Superintendent. Certification
38 may be retroactive if the school or agency met all the requirements
39 of this section on the date the retroactive certification is effective.
40 Certification expires on December 31 of the terminating year.

1 (h) The Superintendent *annually* shall ~~annually~~ review the
2 certification of each nonpublic, nonsectarian school and agency.
3 For this purpose, a certified school or agency *annually* shall
4 ~~annually~~ update its application between August 1 and October 31,
5 unless the board grants a waiver pursuant to Section 56101. The
6 Superintendent may conduct an onsite review as part of the annual
7 review.

8 (i) (1) The Superintendent shall conduct an investigation of a
9 nonpublic, nonsectarian school or agency onsite at any time without
10 prior notice if there is substantial reason to believe that there is an
11 immediate danger to the health, safety, or welfare of a child. The
12 Superintendent shall document the concern and submit it to the
13 nonpublic, nonsectarian school or agency at the time of the onsite
14 investigation. The Superintendent shall require a written response
15 to any noncompliance or deficiency found.

16 (2) With respect to a nonpublic, nonsectarian school, the
17 Superintendent shall conduct an investigation, which may include
18 an unannounced onsite visit, if the Superintendent receives
19 evidence of a significant deficiency in the quality of educational
20 services provided, a violation of Section 56366.9, or
21 noncompliance with the policies expressed by subdivision (b) of
22 Section 1501 of the Health and Safety Code by the nonpublic,
23 nonsectarian school. The Superintendent shall document the
24 complaint and the results of the investigation and shall provide
25 copies of the documentation to the complainant, the nonpublic,
26 nonsectarian school, and the contracting local educational agency.

27 (3) Violations or noncompliance documented pursuant to
28 paragraph (1) or (2) shall be reflected in the status of the
29 certification of the school, at the discretion of the Superintendent,
30 pending an approved plan of correction by the nonpublic,
31 nonsectarian school. The department shall retain for a period of
32 10 years, all violations pertaining to certification of the nonpublic,
33 nonsectarian school or agency.

34 (j) The Superintendent shall monitor the facilities, the
35 educational environment, and the quality of the educational
36 program, including the teaching staff, the credentials authorizing
37 service, the standards-based core curriculum being employed, and
38 the standard focused instructional materials used, of an existing
39 certified nonpublic, nonsectarian school or agency on a three-year
40 cycle, as follows:

1 (1) The nonpublic, nonsectarian school or agency shall complete
2 a self-review in year one.

3 (2) The Superintendent shall conduct an onsite review of the
4 nonpublic, nonsectarian school or agency in year two.

5 (3) The Superintendent shall conduct a followup visit to the
6 nonpublic, nonsectarian school or agency in year three.

7 (k) (1) Notwithstanding any other provision of law, the
8 Superintendent may not certify a nonpublic, nonsectarian school
9 or agency that proposes to initiate or expand services to pupils
10 currently educated in the immediate prior fiscal year in a juvenile
11 court program, community school pursuant to Section 56150, or
12 other nonspecial education program, including independent study
13 or adult school, or both, unless the nonpublic, nonsectarian school
14 or agency notifies the county superintendent of schools and the
15 special education local plan area in which the proposed new or
16 expanded nonpublic, nonsectarian school or agency is located of
17 its intent to seek certification.

18 (2) The notification shall occur no later than the December 1
19 prior to the new fiscal year in which the proposed or expanding
20 school or agency intends to initiate services. The notice shall
21 include the following:

22 (A) The specific date upon which the proposed nonpublic,
23 nonsectarian school or agency is to be established.

24 (B) The location of the proposed program or facility.

25 (C) The number of pupils proposed for services, the number of
26 pupils currently served in the juvenile court, community school,
27 or other nonspecial education program, the current school services
28 including special education and related services provided for these
29 pupils, and the specific program of special education and related
30 services to be provided under the proposed program.

31 (D) The reason for the proposed change in services.

32 (E) The number of staff that will provide special education and
33 designated instruction and services and hold a current valid
34 California credential or license in the service rendered ~~or certificate~~
35 ~~of registration to provide occupational therapy.~~

36 (3) In addition to the requirements in subdivisions (a) to (f),
37 inclusive, the Superintendent shall require and consider the
38 following in determining whether to certify a nonpublic,
39 nonsectarian school or agency as described in this subdivision:

1 (A) A complete statement of the information required as part
2 of the notice under paragraph (1).

3 (B) Documentation of the steps taken in preparation for the
4 conversion to a nonpublic, nonsectarian school or agency, including
5 information related to changes in the population to be served and
6 the services to be provided pursuant to each pupil's individualized
7 education program.

8 (4) Notwithstanding any other provision of law, the certification
9 becomes effective no earlier than July 1 if the school or agency
10 provided the notification required pursuant to paragraph (1).

11 (l) (1) Commencing July 1, 2006, notwithstanding any other
12 provision of law, the Superintendent ~~may~~ *shall* not certify or renew
13 the certification of a nonpublic, nonsectarian school or agency,
14 unless all of the following conditions are met:

15 (A) The entity operating the nonpublic, nonsectarian school or
16 agency maintains separate financial records for each entity that it
17 operates, with each nonpublic, nonsectarian school or agency
18 identified separately from any licensed children's institution that
19 it operates.

20 (B) The entity submits an annual budget that identifies the
21 projected costs and revenues for each entity and demonstrates that
22 the rates to be charged are reasonable to support the operation of
23 the entity.

24 (C) The entity submits an entity-wide annual audit that identifies
25 its costs and revenues, by entity, in accordance with generally
26 accepted accounting and auditing principles. The audit shall clearly
27 document the amount of moneys received and expended on the
28 education program provided by the nonpublic, nonsectarian school.

29 (D) The relationship between various entities operated by the
30 same entity are documented, defining the responsibilities of the
31 entities. The documentation shall clearly identify the services to
32 be provided as part of each program, for example, the residential
33 or medical program, the mental health program, or the educational
34 program. The entity shall not seek funding from a public agency
35 for a service, either separately or as part of a package of services,
36 if the service is funded by another public agency, either separately
37 or as part of a package of services.

38 (2) For purposes of this section, the term "licensed children's
39 institution" has the same meaning as it is defined by Section
40 56155.5.

(m) The school or agency shall be charged a reasonable fee for certification. The Superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

| | |
|-----------------------------|--------|
| (1) 1-5 pupils..... | \$ 300 |
| (2) 6-10 pupils..... | 500 |
| (3) 11-24 pupils..... | 1,000 |
| (4) 25-75 pupils..... | 1,500 |
| (5) 76 pupils and over..... | 2,000 |

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the Superintendent. The Superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the Superintendent.

(n) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) The board shall develop regulations to implement this subdivision.

(o) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 62. Section 56366.2 of the Education Code is amended to read:

1 56366.2. (a) ~~A district, special education local plan area,~~
2 ~~county office~~ *local educational agency*, nonpublic, nonsectarian
3 school, or nonpublic, nonsectarian agency may petition the
4 Superintendent to waive one or more of the requirements under
5 Sections 56365, 56366, 56366.3, and 56366.6. The petition shall
6 state the reasons for the waiver request, and shall include the
7 following:

8 (1) Sufficient documentation to demonstrate that the waiver is
9 necessary to the content and implementation of a specific pupil's
10 individualized education program and the pupil's current
11 placement.

12 (2) The period of time that the waiver will be effective during
13 any one school year.

14 (3) Documentation and assurance that the waiver does not
15 abrogate any right provided individuals with exceptional needs
16 and their parents or guardians under state or federal law, and does
17 not hinder the compliance of a ~~district, special education local plan~~
18 ~~area, or county office~~ *local educational agency* with the *federal*
19 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
20 et seq.), Section 504 of the *federal* Rehabilitation Act of 1973 (29
21 U.S.C. Sec. 794), the *federal* Americans with Disabilities Act of
22 1990 (42 U.S.C. Sec. 12101 et seq.), and federal regulations
23 relating ~~thereto~~ *to those acts*.

24 (b) No waiver shall be granted for reimbursement of those costs
25 prohibited under Article 4 (commencing with Section 56836.20)
26 of Chapter 7.2 of Part 30 or for the certification requirements
27 pursuant to Section 56366.1 unless approved by the board pursuant
28 to Section 56101.

29 (c) In submitting the annual report on waivers granted under
30 Section 56101 and this section to the board, the Superintendent
31 shall specify information related to the provision of special
32 education and related services to individuals with exceptional
33 needs through contracts with nonpublic, nonsectarian schools and
34 agencies located in the state, nonpublic, nonsectarian school and
35 agency placements in facilities located out of state, and the specific
36 section waived pursuant to this section.

37 SEC. 63. Section 56366.3 of the Education Code is amended
38 to read:

39 56366.3. (a) No contract for special education and related
40 services provided by a nonpublic, nonsectarian agency shall be

1 reimbursed by the state pursuant to Article 4 (commencing with
2 Section 56836.20) of Chapter 7.2 and Section 56836.16 if the
3 contract covers special education and related services,
4 administration, or supervision by an individual who is or was an
5 employee of a contracting ~~district, special education local plan~~
6 ~~area, or county office local educational agency~~ within the last 365
7 days. Former contracting agency personnel may be employed by
8 a nonpublic, nonsectarian agency if the personnel were
9 involuntarily terminated or laid off as part of necessary staff
10 reductions from the ~~district, special education local plan area, or~~
11 ~~county office local educational agency~~.

12 (b) This section does not apply to any person who is able to
13 provide designated instruction and services during the extended
14 school year because he or she is otherwise employed for up to 10
15 months of the school year by the ~~district, special education local~~
16 ~~plan area, or county office local educational agency~~.

17 SEC. 64. Section 56366.8 of the Education Code is amended
18 to read:

19 56366.8. The ~~State Department of Education~~ *department*, as a
20 part of its certification process and complaint investigation process
21 for nonpublic, nonsectarian schools or agencies shall do all of the
22 following:

23 (a) Provide advance notice of certification reviews to the
24 contracting ~~district, special education local plan area, or county~~
25 ~~office local educational agency~~, and to the nonpublic, nonsectarian
26 school or agency under certification review.

27 (b) Provide advance notice of complaint investigations to the
28 contracting ~~district, special education local plan area, or county~~
29 ~~office of education local educational agency~~.

30 (c) Include the contracting ~~district, special education local plan~~
31 ~~area, or county office local educational agency~~ in certification
32 reviews and complaint investigations.

33 (d) Transmit final reports of certification reviews and complaint
34 investigations to ~~districts, special education local plan areas, and~~
35 ~~county offices local educational agencies~~, placement agencies,
36 and ~~educational~~ *other public educational* agencies that contract
37 with the nonpublic, nonsectarian school or agency.

38 SEC. 65. Section 56369 of the Education Code is amended to
39 read:

1 56369. A ~~district, special education local plan area, or county~~
2 ~~office~~, *local educational agency* may contract with another public
3 agency to provide special education or related services to an
4 individual with exceptional needs.

5 SEC. 66. Section 56383 of the Education Code is amended to
6 read:

7 56383. Pursuant to ~~subsection (b) of Section 300.349~~ *Section*
8 *300.325(b)* of Title 34 of the Code of Federal Regulations, after
9 an individual with exceptional needs is placed in a nonpublic,
10 nonsectarian school under Section 56366, any meetings to review
11 and revise the pupil's individualized education program may be
12 conducted by the nonpublic, nonsectarian school at the discretion
13 of the ~~district, special education local plan area, or county office~~
14 ~~of education~~ *local educational agency*. However, even if a
15 nonpublic, nonsectarian school implements a child's individualized
16 education program, responsibility for compliance with this part
17 and with the *federal* Individuals with Disabilities Education Act
18 (20 U.S.C. Sec. 1400 et seq.) and implementing regulations remains
19 with the ~~district, special education local plan area, or county office~~
20 ~~of education~~ *local educational agency* pursuant to ~~subsection (e)~~
21 ~~of Section 300.349~~ *Section 300.325(c)* of Title 34 of the Code of
22 Federal Regulations.

23 SEC. 67. Section 56425 of the Education Code is amended to
24 read:

25 56425. As a condition of receiving state aid pursuant to this
26 part, ~~each district, special education local plan area, or county~~
27 ~~office~~ *a local educational agency* that operated early education
28 programs for individuals with exceptional needs younger than
29 three years of age, as defined in Section 56026, and that received
30 state or federal aid for special education for those programs in the
31 1980–81 fiscal year, shall continue to operate early education
32 programs in the 1981–82 fiscal year and each fiscal year thereafter.

33 If a ~~district or county office~~ *local educational agency* offered
34 those programs in the ~~1980–81~~ *1980–81* fiscal year but in a
35 subsequent year transfers the programs to another ~~district or county~~
36 ~~office in the special education local plan area~~ *local educational*
37 *agency*, the ~~district or county office~~ *local educational agency* shall
38 be exempt from the provisions of this section in any year when
39 the programs are offered by the district or county office to which
40 they were transferred.

1 A ~~district, special education local plan area, or county office~~
2 *local educational agency* that is required to offer a program
3 pursuant to this section shall be eligible for funding pursuant to
4 Section 56432.

5 This section shall become operative on July 1, 1998.

6 SEC. 68. Section 56426.25 of the Education Code is amended
7 to read:

8 56426.25. The maximum service levels set forth in Sections
9 56426.1 and 56426.2 apply only for purposes of the allocation of
10 funds for early education programs pursuant to Sections 56427,
11 56428, and 56432, and may be exceeded by a ~~district, special~~
12 ~~education local plan area, or county office~~ *local educational*
13 *agency*, in accordance with the infants' individualized family
14 service plan, provided that no change in the level of entitlement
15 to state funding under this part thereby results.

16 This section shall become operative on July 1, 1998.

17 SEC. 69. Section 56426.6 of the Education Code is amended
18 to read:

19 56426.6. (a) Early education services shall be provided by the
20 ~~district, special education local plan area, or county office~~ *local*
21 *educational agency* through a transdisciplinary team consisting of
22 a group of professionals from various disciplines, agencies, and
23 parents who shall share their expertise and services to provide
24 appropriate services for infants and their families. Each team
25 member shall be responsible for providing and coordinating early
26 education services for one or more infants and their families, and
27 shall serve as a consultant to other team members and as a provider
28 of appropriate related services to other infants in the program.

29 (b) Credentialed personnel with expertise in vision or hearing
30 impairments shall be made available by the ~~district, special~~
31 ~~education local plan area, or county office~~ *local educational agency*
32 to early education programs serving infants identified in accordance
33 with subdivision (a), (b), or (d) of Section 3030 of Title 5 of the
34 California Code of Regulations, and shall be the primary providers
35 of services under those programs whenever possible.

36 (c) Transdisciplinary teams may include, but need not be limited
37 to, qualified persons from the following disciplines:

38 (1) Early childhood special education.

39 (2) Speech and language therapy.

1 (3) Nursing, with a skill level not less than that of a registered
2 nurse.

3 (4) Social work, psychology, or mental health.

4 (5) Occupational therapy.

5 (6) Physical therapy.

6 (7) Audiology.

7 (8) Parent to parent support.

8 (d) ~~Any~~ A person who is authorized by the ~~district, special~~
9 ~~education local plan area, or county office~~ *local educational agency*
10 to provide early education or related services to infants shall have
11 appropriate experience in normal and atypical infant development
12 and an understanding of the unique needs of families of infants
13 with exceptional needs, or, absent that experience and
14 understanding, shall undergo a comprehensive training plan for
15 that purpose, which plan shall be developed and implemented as
16 part of the staff development component of the local plan for early
17 education services.

18 SEC. 70. Section 56426.9 of the Education Code is amended
19 to read:

20 56426.9. (a) Pursuant to ~~paragraph (8) of subsection (a) of~~
21 ~~Section 1437~~ *Section 1437(a)(8)* of Title 20 of the United States
22 Code, ~~each district, special education local plan area, or county~~
23 ~~office~~ *a local educational agency* shall ensure that each child
24 participating in early childhood special education services pursuant
25 to this chapter, and who will participate in preschool programs
26 pursuant to Chapter 4.45 (commencing with Section 56440) ~~of~~
27 ~~this part~~, experiences a smooth and effective transition to those
28 preschool programs.

29 (b) Pursuant to ~~subsection (c) of Section 300.121~~ *Section*
30 *300.101(b)* of Title 34 of the Code of Federal Regulations, ~~each~~
31 ~~district, special education local plan area, or county office~~ *shall a*
32 *local educational agency*, by the third birthday of a child described
33 in subdivision (a) ~~of this section~~, *shall* ensure that an individualized
34 education program or an individualized family service plan has
35 been developed and is being implemented for the child consistent
36 with a free appropriate public education for children beginning at
37 three years of age.

38 (c) In accordance with ~~paragraph (8) of subsection (a) of Section~~
39 ~~1437~~ *Section 1437(a)(8)* of Title 20 of the United States Code,
40 ~~each district, special education local plan area, or county office~~ *a*

1 *local educational agency* shall participate in transition planning
2 conferences arranged by the designated lead agency.

3 (d) Any child who becomes three years of age while
4 participating in early childhood special education services under
5 this chapter may continue until June 30 of the current program
6 year, if the individualized education program team determines that
7 the preschooler is eligible pursuant to Section 56441.11, develops
8 an individualized education program, and determines that the early
9 childhood special education services remain appropriate. No later
10 than June 30 of that year, the individualized education program
11 team shall meet to review the preschooler's progress and revise
12 the individualized education program accordingly. The
13 individualized education program team meeting shall be conducted
14 by the ~~local education~~ *educational agency* responsible for the
15 provision of preschool special education services. Representatives
16 of the early childhood special education program shall be invited
17 to that meeting. If a child's third birthday occurs during the
18 summer, the child's individualized education program team shall
19 determine the date when services under the individualized
20 education program will begin, pursuant to ~~paragraph (2) of~~
21 ~~subsection (e) of Section 300.121~~ *Section 300.101(b)* of Title 34
22 of the Code of Federal Regulations.

23 SEC. 71. Section 56431 of the Education Code is amended to
24 read:

25 56431. The ~~superintendent~~ *Superintendent* shall develop
26 procedures and criteria to enable a ~~district, special education local~~
27 ~~plan area, or county office~~ *local educational agency* to contract
28 with private nonprofit preschools or child development centers to
29 provide special education and related services to infant and
30 preschool age individuals with exceptional needs. The criteria shall
31 include minimum standards that the private, nonprofit preschool
32 or center shall be required to meet.

33 SEC. 72. Section 56440 of the Education Code is amended to
34 read:

35 56440. (a) Each special education local plan area shall submit
36 a plan to the ~~superintendent~~ *Superintendent* by September 1, 1987,
37 for providing special education and services to individuals with
38 exceptional needs, as defined by the ~~State Board of Education~~
39 *board*, who are between the ages of three and five years, inclusive,
40 and do not require intensive special education and services, but

1 who would be eligible for special education and services under
2 Title II of the Education of the Handicapped Act Amendments of
3 1986, Public Law 99-457 (20 U.S.C. Secs. 1411, 1412, 1413, and
4 1419).

5 (b) ~~The superintendent~~ *Superintendent* shall provide for a
6 five-year phase-in of the individuals with exceptional needs
7 qualifying for special education and services under Public Law
8 99-457 who do not require intensive special education and services,
9 through an application process to be developed by the
10 ~~superintendent~~ *Superintendent*.

11 (c) All individuals with exceptional needs between the ages of
12 three and five years, inclusive, identified in subdivision (a) shall
13 be served by the ~~districts and county offices~~ *local educational*
14 *agencies* within each special education local plan area by June 30,
15 1992, to the extent required under federal law and pursuant to the
16 local plan and application approved by the ~~superintendent~~
17 *Superintendent*.

18 (d) Individuals with exceptional needs between the ages of three
19 and five years, inclusive, who are identified by the ~~district, special~~
20 ~~education local plan area, or county office~~ *local educational agency*
21 as requiring special education and services, as defined by the ~~State~~
22 ~~Board of Education~~ *board*, shall be eligible for special education
23 and services pursuant to this part and shall not be subject to any
24 phase-in plan.

25 (e) In special education local plan areas where individuals with
26 exceptional needs between the ages of three and five, inclusive,
27 who do not require intensive special education and services are
28 expected to have an increased demand on school facilities as a
29 result of projected growth pursuant to this chapter, the special
30 education local plan area director shall submit a written report on
31 the impacted local educational agencies to the State Allocation
32 Board by December 1, 1987. The State Allocation Board shall
33 assess the situation and explore ways of resolving the school
34 facilities impaction situation.

35 (f) ~~The superintendent~~ *Superintendent* shall provide technical
36 assistance to local educational agencies in order to help identify
37 suitable alternative instructional settings to alleviate the school
38 facilities impaction situation. Alternative instructional settings
39 may include, but are not limited to, state preschool programs and

1 the child's home. Nothing in this chapter shall cause the
2 displacement of children currently enrolled in these settings.

3 (g) Special education facilities operated by local educational
4 agencies serving children under this chapter and Chapter 4.4
5 (commencing with Section 56425) shall meet all applicable
6 standards relating to fire, health, sanitation, and building safety,
7 but are not subject to Chapter 3.4 (commencing with Section
8 1596.70), Chapter 3.5 (commencing with Section 1596.90), or
9 Chapter 3.6 (commencing with Section 1597.30) of Division 2 of
10 the Health and Safety Code.

11 (h) This chapter applies to all individuals with exceptional needs
12 between the ages of three and five years, inclusive.

13 SEC. 73. Section 56441.11 of the Education Code is amended
14 to read:

15 56441.11. (a) Notwithstanding any other provision of law or
16 regulation, the special education eligibility criteria in subdivision
17 (b) shall apply to preschool children, between the ages of three
18 and five years.

19 (b) A preschool child, between the ages of three and five years,
20 qualifies as a child who needs early childhood special education
21 services if the child meets the following criteria:

22 (1) Is identified as having one of the following disabling
23 conditions, as defined in Section ~~300.7~~ 300.8 of Title 34 of the
24 Code of Federal Regulations, or an established medical disability,
25 as defined in subdivision (d):

26 (A) Autism.

27 (B) Deaf-blindness.

28 (C) Deafness.

29 (D) Hearing impairment.

30 (E) Mental retardation.

31 (F) Multiple disabilities.

32 (G) Orthopedic impairment.

33 (H) Other health impairment.

34 (I) Serious emotional disturbance.

35 (J) Specific learning disability.

36 (K) Speech or language impairment in one or more of voice,
37 fluency, language and articulation.

38 (L) Traumatic brain injury.

39 (M) Visual impairment.

40 (N) Established medical disability.

1 (2) Needs specially designed instruction or services as defined
2 in Sections 56441.2 and 56441.3.

3 (3) Has needs that cannot be met with modification of a regular
4 environment in the home or school, or both, without ongoing
5 monitoring or support as determined by an individualized education
6 program team pursuant to Section 56431.

7 (4) Meets eligibility criteria specified in Section 3030 of Title
8 5 of the California Code of Regulations.

9 (c) A child is not eligible for special education and services if
10 the child does not otherwise meet the eligibility criteria and his or
11 her educational needs are due primarily to:

12 (A) Unfamiliarity with the English language.

13 (B) Temporary physical disabilities.

14 (C) Social maladjustment.

15 (D) Environmental, cultural, or economic factors.

16 (d) For purposes of this section, “established medical disability”
17 is defined as a disabling medical condition or congenital syndrome
18 that the individualized education program team determines has a
19 high predictability of requiring special education and services.

20 (e) When standardized tests are considered invalid for children
21 between the ages of three and five years, alternative means, for
22 example, scales, instruments, observations, and interviews shall
23 be used as specified in the assessment plan.

24 (f) In order to implement the eligibility criteria in subdivision
25 (b), the ~~superintendent~~ *Superintendent* shall:

26 (1) Provide for training in developmentally appropriate practices,
27 alternative assessment, and placement options.

28 (2) Provide a research-based review for developmentally
29 appropriate application criteria for young children.

30 (3) Provide program monitoring for appropriate use of the
31 eligibility criteria.

32 (g) If legislation is enacted mandating early intervention services
33 to infants and toddlers with disabilities pursuant to the *federal*
34 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
35 et seq.), the ~~superintendent~~ *Superintendent* shall reconsider the
36 eligibility criteria for preschool children, between the ages of three
37 and five years, and recommend appropriate changes to the
38 Legislature.

39 SEC. 74. Section 56443 of the Education Code is amended to
40 read:

1 56443. (a) ~~The State Department of Education~~ *department*
2 shall amend its interagency agreement with the Administration for
3 Children, Youth, and Families, Region IX, Head Start, United
4 States Department of Health and Human Services, to permit a
5 ~~district, special education local plan area, or county office~~ *local*
6 *educational agency* to contract with a Head Start program for
7 special education and services for individuals with exceptional
8 needs between the ages of three and five years pursuant to this
9 part.

10 (b) Apportionments allocated to Head Start programs for special
11 education and services to individuals with exceptional needs
12 between the ages of three and five years shall supplement and not
13 supplant funds for which the Head Start programs are eligible, or
14 are already receiving, from other funding sources.

15 SEC. 75. Section 56454 of the Education Code is amended to
16 read:

17 56454. In order to provide districts, special education local
18 plan areas, and county offices with maximum flexibility to secure
19 and utilize all federal funds available to enable those entities to
20 meet the career and vocational needs of individuals with
21 exceptional needs more effectively and efficiently, and to provide
22 maximum federal funding to those agencies for the provision of
23 that education, ~~the superintendent~~ *Superintendent* shall do all the
24 following:

25 (a) Provide necessary technical assistance to ~~districts, special~~
26 ~~education local plan areas, and county offices~~ *local educational*
27 *agencies*.

28 (b) Establish procedures for these entities to obtain available
29 federal funds.

30 (c) Apply for necessary waivers of federal statutes and
31 regulations including, but not limited to, those governing federal
32 career and vocational education programs.

33 SEC. 76. Section 56456 of the Education Code is amended to
34 read:

35 56456. It is the intent of the Legislature that ~~districts, special~~
36 ~~education local plan areas, and county offices~~ *local educational*
37 *agencies* may use any state or local special education funds for
38 approved vocational programs, services, and activities to satisfy
39 the excess cost matching requirements for receipt of federal
40 vocational education funds for individuals with exceptional needs.

1 SEC. 77. Section 56473 of the Education Code is amended to
2 read:

3 56473. Project workability shall be funded pursuant to Item
4 6100-161-0001 ~~and Item 6100-161-0890~~ of Section 2.00 of the
5 annual Budget Act.

6 SEC. 78. Section 56475 of the Education Code is amended to
7 read:

8 56475. (a) ~~The superintendent~~ *Superintendent* and the directors
9 of the State Department of Health *Care* Services, the State
10 Department of Mental Health, the State Department of
11 Developmental Services, the State Department of Social Services,
12 the Department of Rehabilitation, the Department of ~~the Youth~~
13 ~~Authority~~ *Corrections and Rehabilitation, Division of Juvenile*
14 *Facilities*, and the Employment Development Department shall
15 develop written interagency agreements or adopt joint regulations
16 that include responsibilities, in accordance with ~~paragraph (12) of~~
17 ~~subsection (a) of Section 1412~~ *Section 1412(a)(12)* of Title 20 of
18 the United States Code and Section ~~300.142~~ *300.154* of Title 34
19 of the Code of Federal Regulations, for the provision of special
20 education and related services to individuals with exceptional
21 needs in the State of California.

22 (b) ~~The superintendent~~ *Superintendent* shall develop interagency
23 agreements with other state and local public agencies, as deemed
24 necessary by the ~~superintendent~~ *Superintendent*, to carry out the
25 provisions of state and federal law.

26 (c) (1) Each interagency agreement shall be submitted by the
27 ~~superintendent~~ *Superintendent* to each legislative fiscal committee,
28 education committee, and policy committee, responsible for
29 legislation relating to those individuals with exceptional needs that
30 will be affected by the agreement if it is effective.

31 (2) An interagency agreement shall not be effective sooner than
32 30 days after it has been submitted to each of the legislative
33 committees specified in paragraph (1).

34 SEC. 79. Section 56476 of the Education Code is amended to
35 read:

36 56476. The Governor or designee of the Governor, in
37 accordance with ~~paragraph (12) of subsection (a) of Section 1412~~
38 *Section 1412(a)(12)* of Title 20 of the United States Code and
39 Section ~~300.142~~ *300.154* of Title 34 of the Code of Federal
40 Regulations, shall ensure that each agency under the Governor's

1 jurisdiction enters into an interagency agreement with the
2 superintendent to ensure that all services that are needed to ensure
3 a free appropriate public education are provided.

4 SEC. 80. Section 56500 of the Education Code is amended to
5 read:

6 56500. As used in this chapter, “~~public-education agency~~”
7 ~~means a district, special education local plan area, or county office;~~
8 ~~depending on the category of local plan elected by the governing~~
9 ~~board of a school district pursuant to Section 56195.1, or any other~~
10 ~~public agency providing special education or related services is~~
11 ~~identical to the definition of that term in Section 56028.5 and~~
12 ~~Section 300.33 of Title 34 of the Code of Federal Regulations.~~

13 SEC. 81. Section 56500.5 of the Education Code is amended
14 to read:

15 56500.5. As provided in ~~clause (iii) of paragraph (3) of~~
16 ~~subsection (a) of Section 300.122~~ *Section 300.102(a)(3)(iii)* of
17 Title 34 of the Code of Federal Regulations, parents or guardians
18 of an individual with exceptional needs shall be given reasonable
19 written prior notice, in accordance with Section 56500.4, that their
20 child will be graduating from high school with a regular high
21 school diploma because graduation from high school with a regular
22 diploma constitutes a change in placement.

23 SEC. 82. Section 56500.6 of the Education Code is amended
24 to read:

25 56500.6. Due process and state complaint procedures for
26 children enrolled in private schools by their parents pursuant to
27 Sections 56170 to 56174.5, inclusive, shall be in accordance with
28 ~~Section 300.457~~ *300.140* of Title 34 of the Code of Federal
29 Regulations.

30 SEC. 83. Section 56501 of the Education Code is amended to
31 read:

32 56501. (a) The due process hearing procedures prescribed by
33 this chapter extend to the parent or guardian, as defined in Section
34 56028, a pupil who has been emancipated, and a pupil who is a
35 ward or dependent of the court or for whom no parent or guardian
36 can be identified or located when the hearing officer determines
37 that either the local educational agency has failed to appoint a
38 surrogate parent as required by Section 7579.5 of the Government
39 Code or the surrogate parent appointed by the local educational
40 agency does not meet the criteria set forth in subdivision (f) of

1 Section 7579.5 of the Government Code, and the public-education
2 agency involved in any decisions regarding a pupil. The
3 appointment of a surrogate parent after a hearing has been
4 requested by the pupil shall not be cause for dismissal of the
5 hearing request. The parent or guardian and the public-education
6 agency involved may initiate the due process hearing procedures
7 prescribed by this chapter under any of the following
8 circumstances:

9 (1) There is a proposal to initiate or change the identification,
10 assessment, or educational placement of the child or the provision
11 of a free, appropriate public education to the child.

12 (2) There is a refusal to initiate or change the identification,
13 assessment, or educational placement of the child or the provision
14 of a free, appropriate public education to the child.

15 (3) The parent or guardian refuses to consent to an assessment
16 of the child.

17 (4) There is a disagreement between a parent or guardian and
18 a district, special education local plan area, or county office
19 regarding the availability of a program appropriate for the child,
20 including the question of financial responsibility, as specified in
21 ~~subsection (b) of Section 300.403~~ *Section 300.148* of Title 34 of
22 the Code of Federal Regulations.

23 (b) The due process hearing rights prescribed by this chapter
24 include, but are not limited to, all the following:

25 (1) The right to a mediation conference pursuant to Section
26 56500.3.

27 (2) The right to request a mediation conference at any point
28 during the hearing process. The mediation process is not to be used
29 to deny or delay a parent's or guardian's right to a due process
30 hearing, or to deny any other rights afforded under this part, or
31 under the *federal* Individuals with Disabilities Education Act (20
32 U.S.C. Sec. 1400 et seq.). Notwithstanding subdivision (a) of
33 Section 56500.3, attorneys and advocates are permitted to
34 participate in mediation conferences scheduled after the filing of
35 a request for due process hearing.

36 (3) The right to examine pupil records pursuant to Section
37 56504. This provision shall not be construed to abrogate the rights
38 prescribed by Chapter 6.5 (commencing with Section 49060) of
39 Part 27.

(4) The right to a fair and impartial administrative hearing at the state level, before a person knowledgeable in the laws governing special education and administrative hearings, under contract with the department, pursuant to Section 56505.

(c) In addition to the rights prescribed by subdivision (b), the parent or guardian has the following rights:

(1) The right to have the pupil who is the subject of the state hearing present at the hearing.

(2) The right to open the state hearing to the public.

SEC. 84. Section 56504 of the Education Code is amended to read:

56504. The parent shall have the right and opportunity to examine all school records of his or her child and to receive copies pursuant to this section and to Section 49065 within five business days after the request is made by the parent, either orally or in writing. The public-education agency shall comply with a request for school records without unnecessary delay before any meeting regarding an individualized education program or any hearing pursuant to Section 300.507 or Sections 300.530 to 300.532, inclusive, 300.121, 300.301, or 300.304 of Title 34 of the Code of Federal Regulations or resolution session pursuant to Section 300.510 300.514 of Title 34 of the Code of Federal Regulations and in no case more than five business days after the request is made orally or in writing. The parent shall have the right to a response from the public-education agency to reasonable requests for explanations and interpretations of the records. If any school record includes information on more than one pupil, the parents of those pupils have the right to inspect and review only the information relating to their child or to be informed of that specific information. A public education agency shall provide a parent, on request of the parent, a list of the types and locations of school records collected, maintained, or used by the agency. A public education agency may charge no more than the actual cost of reproducing the records, but if this cost effectively prevents the parent from exercising the right to receive the copy or copies the copy or copies shall be reproduced at no cost.

SEC. 85. Section 56504.5 of the Education Code is amended to read:

56504.5. (a) The department shall enter into an interagency agreement with another state agency or contract with a nonprofit

1 organization or entity to conduct mediation conferences and due
2 process hearings in accordance with Sections 300.506 and ~~300.508~~
3 *300.511* of Title 34 of the Code of Federal Regulations.

4 (b) The agency or contractor shall provide hearings and
5 mediations in a manner that is consistent with all applicable federal
6 and state laws and regulations, and any other applicable legal
7 authorities.

8 (c) The Superintendent shall adopt regulations that establish
9 standards for all of the following components of an interagency
10 agreement or contract entered into pursuant to subdivision (a):

11 (1) The training and qualifications for mediators and hearing
12 officers.

13 (2) The availability of translators and translated documents.

14 (3) Prevention of conflicts of interest for mediators and hearing
15 officers.

16 (4) The supervision of mediators and hearing officers.

17 (5) Monitoring, tracking, and management of cases.

18 (6) The process for conducting mediations and due process
19 hearings.

20 (7) Communication with parties to mediations and due process
21 hearings.

22 (8) The establishment of a committee to advise the agency or
23 contractor with regard to conducting mediations and due process
24 hearings.

25 (9) The contents of a manual to describe the procedures of the
26 mediation and due process hearing.

27 (d) (1) An agency or contractor shall collect and provide data
28 in standardized formats, which allow the department to manage
29 and report on all mediation and due process activities in the state.
30 An agency or contractor shall propose the manner in which specific
31 data and information will be collected and transmitted
32 electronically and in writing to the department on a quarterly basis.
33 The reports shall contain data to provide the state with information
34 to comply with federal and state regulations for monitoring local
35 programs. An agency or contractor shall identify applicable data
36 to be collected, analyzed, and formatted including, but not limited
37 to, caseloads, status of cases, and outcomes for mediations and
38 hearings.

(2) The agency or contractor shall, on a quarterly basis, provide the department with information that includes, but is not limited to, all of the following:

(A) Formal complaints: (i) Number of complaints; (ii) number of complaints with findings; (iii) number of complaints with no findings; (iv) number of complaints not investigated, withdrawn, or no jurisdiction; (v) number of complaints completed or addressed within timelines; and (vi) number of complaints pending.

(B) Mediations: (i) Number of mediations not related to hearing requests; (ii) number of mediations related to hearing requests; (iii) number of mediation agreements not related to hearing requests; (iv) number of mediation agreements related to hearing requests; and (v) number of mediations pending.

(C) Due process hearings: (i) Number of hearing requests; (ii) number of hearings held; (iii) number of decisions issued after timelines and extension expired; (iv) number of hearings pending; and (v) number of expedited hearings.

(3) The agency or contractor shall submit hard copies of hearing decision reports to the department and shall administer and upload all redacted reports on a quarterly basis to the hearing decision database of the department. The agency or contractor shall have the ability to provide the department with the costs of hearings and mediations on both an aggregate and individual basis.

SEC. 86. Section 56506 of the Education Code is amended to read:

56506. In addition to the due process hearing rights enumerated in subdivision (b) of Section 56501, the following due process rights extend to the pupil and the parent:

(a) Written notice to the parent of his or her rights in language easily understood by the general public and in the native language of the parent, as defined in Section ~~300.19~~ 300.29 of Title 34 of the Code of Federal Regulations, or other mode of communication used by the parent, unless to do so is clearly not feasible. The written notice of rights shall include, but not be limited to, those prescribed by Section 56341.

(b) The right to initiate a referral of a child for special education services pursuant to Section 56303.

(c) The right to obtain an independent educational assessment pursuant to subdivision (b) or (c) of Section 56329.

1 (d) The right to participate in the development of the
2 individualized education program and to be informed of the
3 availability under state and federal law of free appropriate public
4 education and of all available alternative programs, both public
5 and nonpublic.

6 (e) Written parental consent pursuant to Section 56321 shall be
7 obtained before any assessment of the pupil is conducted, unless
8 the public-education agency prevails in a due process hearing
9 relating to the assessment. In accordance with ~~subsection (e) of~~
10 ~~Section 300.505~~ *Section 300.300(c)(2)* of Title 34 of the Code of
11 Federal Regulations, informed parental consent need not be
12 obtained in the case of a reassessment of the pupil if the local
13 educational agency can demonstrate that it has taken reasonable
14 measures to obtain consent and the pupil's parent has failed to
15 respond.

16 (f) Written parental consent pursuant to Section 56346 shall be
17 obtained before the pupil is placed in a special education program.

18 (g) A parent of an individual with exceptional needs may elect
19 to receive notices required under this chapter by an electronic mail
20 communication, if the local educational agency makes that option
21 available, in accordance with ~~subsection (n) of Section 1415~~
22 *Section 1415(n)* of Title 20 of the United States Code.

23 SEC. 87. Section 56507 of the Education Code is amended to
24 read:

25 56507. (a) If either party to a due process hearing intends to
26 be represented by an attorney in the state hearing, notice of that
27 intent shall be given to the other party at least 10 days prior to the
28 hearing. The failure to provide that notice shall constitute good
29 cause for a continuance.

30 (b) (1) An award of reasonable attorneys' fees to the prevailing
31 parent, guardian, or pupil, as the case may be, may only be made
32 either with the agreement of the parties following the conclusion
33 of the administrative hearing process or by a court of competent
34 jurisdiction pursuant to ~~paragraph (3) of subsection (i) of Section~~
35 ~~1415~~ *Section 1415(i)(3)* of Title 20 of the United States Code.

36 (2) In accordance with ~~paragraph (3) of subsection (i) of Section~~
37 ~~1415~~ *Section 1415(i)(3)* of Title 20 of the United States Code, the
38 court, in its discretion, may award reasonable attorneys' fees as
39 part of the costs to a prevailing party who is a state educational
40 agency or local educational agency in the following circumstances:

1 (A) Against the attorney of a parent who files a due process
2 hearing request or subsequent cause of action that is frivolous,
3 unreasonable, or without foundation, or against the attorney of a
4 parent who continued to litigate after the litigation clearly became
5 frivolous, unreasonable, or without foundation.

6 (B) Against the attorney of a parent, or against the parent, if the
7 parent's due process hearing request or subsequent cause of action
8 was presented for any improper purpose, such as to harass, to cause
9 unnecessary delay, or to needlessly increase the cost of litigation.

10 (c) ~~Public-education~~ agencies shall not use federal funds
11 distributed under Part B of the federal Individuals with Disabilities
12 Education Act (20 U.S.C. Sec. 1400 et seq.), or other federal
13 special education funds, for the agency's own legal counsel or
14 other advocacy costs, that may include, but are not limited to, a
15 private attorney or employee of an attorney, legal paraprofessional,
16 or other paid advocate, related to a due process hearing or the
17 appeal of a hearing decision to the courts. Nor shall the funds be
18 used to reimburse parents who prevail and are awarded attorneys'
19 fees, pursuant to subdivision (b), as part of the judgment. Nothing
20 in this subdivision shall preclude ~~public-education~~ agencies from
21 using these funds for attorney services related to the establishment
22 of policy and programs, or responsibilities, under Part B of the
23 *federal* Individuals with Disabilities Education Act (20 U.S.C.
24 Sec. 1400 et seq.) and the program administration of these
25 programs. This subdivision does not apply to attorneys and others
26 hired under contract to conduct administrative hearings pursuant
27 to subdivision (a) of Section 56505.

28 (d) The hearing decision shall indicate the extent to which each
29 party has prevailed on each issue heard and decided, including
30 issues involving other public agencies named as parties to the
31 hearing.

32 SEC. 88. Section 56508 of the Education Code is amended to
33 read:

34 56508. It is the intent of the Legislature that the department
35 develop training materials that can be used locally by parents,
36 ~~public-education~~ agencies, and others and conduct workshops on
37 alternative resolutions for resolving differences in a nonadversarial
38 atmosphere with the mutual goal of providing a free and
39 appropriate public education for children and youth with
40 disabilities.

SEC. 89. Section 56601.5 of the Education Code is amended to read:

56601.5. Pursuant to ~~paragraph (6) of subsection (a) of Section 1413~~ *Section 1413(a)(7)* of Title 20 of the United States Code and ~~Sections 300.138, 300.139, and 300.240~~ *Section 300.211* of Title 34 of the Code of Federal Regulations, each special education local plan area ~~annually~~ shall ~~annually~~ report to the superintendent the number of pupils receiving special education services participating in the regular school and district assessments and the number participating in an alternate assessment process.

SEC. 90. Section 56606 of the Education Code is amended to read:

56606. ~~The superintendent~~ *Superintendent* shall provide for onsite program and fiscal reviews of the implementation of plans approved under this part. In performing the reviews and audits, ~~the superintendent~~ *Superintendent* may utilize the services of persons outside of the department chosen for their knowledge of special education programs. ~~Each district, A special education local plan area, or county office~~ shall be reviewed at least once during the period of approval of its local plan.

SEC. 91. Section 56836.04 of the Education Code is amended to read:

56836.04. (a) ~~The superintendent~~ *Superintendent* continuously shall ~~continuously~~ monitor and review all special education programs approved under this part to assure that all funds appropriated to special education local plan areas under this part are expended for the purposes intended.

(b) Funds apportioned to special education local plan areas pursuant to this chapter *are to assist local educational agencies to provide special education and related services to individuals with exceptional needs and* shall be expended exclusively for programs operated under this part.

SEC. 92. Section 56845 of the Education Code is amended to read:

56845. (a) ~~The superintendent~~ *Superintendent* may withhold, in whole or in part, state funds or federal funds allocated under the *federal* Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) from ~~a district, special education local plan area, or county office~~ *local educational agency* after reasonable notice

1 and opportunity for a hearing if the ~~superintendent~~ *Superintendent*
2 finds either of the following:

3 (1) The ~~district, special education local plan area, or county~~
4 ~~office~~ *local educational agency* failed to comply substantially with
5 a provision of state law, federal law, or regulations governing the
6 provision of special education and related services to individuals
7 with exceptional needs which results in the failure to comply
8 substantially with corrective action orders issued by the department
9 resulting from monitoring findings or complaint investigations.

10 (2) The ~~district, special education local plan area, or county~~
11 ~~office~~ *local educational agency* failed to implement the decision
12 of a due process hearing officer based on noncompliance with
13 provisions of this part, the implementing regulations, provisions
14 of the *federal* Individuals with Disabilities Education Act (20
15 U.S.C. Sec. 1400 et seq.), or the implementing regulations, which
16 noncompliance results in the denial of, or impedes the delivery of,
17 a free and appropriate public education for an individual with
18 exceptional needs.

19 (b) When the ~~superintendent~~ *Superintendent* determines that a
20 ~~district, special education local plan area, or county office~~ *local*
21 *educational agency* made substantial progress toward compliance
22 with state law, federal law, or regulations governing the provision
23 of special education and related services to individuals with
24 exceptional needs, the ~~superintendent~~ *Superintendent* may
25 apportion the state or federal funds withheld from the ~~district,~~
26 ~~special education local plan area, or county office~~ *local educational*
27 *agency*.

28 (c) Notwithstanding any other provision of law, state funds may
29 not be allocated to offset any federal funding intended for
30 individuals with exceptional needs, as defined in Section 56026,
31 and withheld from a local educational agency due to the agency's
32 noncompliance with state or federal law.

33 (d) For purposes of this section, in order to enter into contracts
34 with one or more local education agencies to serve individuals
35 with exceptional needs who are not being served as required under
36 this part, the department is exempt from the requirements of Part
37 2 (commencing with Section 10100) of Division 2 of the Public
38 Contract Code and from the requirements of Article 6 (commencing
39 with Section 999) of Chapter 6 of Division 4 of the Military and
40 Veterans Code.

SEC. 93. Section 56851 of the Education Code is amended to read:

56851. (a) In developing the individualized educational program for an individual residing in a state hospital who is eligible for services under the *federal* Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a state hospital shall include on its interdisciplinary team a representative of the ~~district, or special education local plan area, or county office local~~ *educational agency* in which the state hospital is located, and the individual's state hospital teacher, depending on whether the state hospital is otherwise working with the ~~district, special education local plan area, or county office local~~ *educational agency* for the provision of special education programs and related services to individuals with exceptional needs residing in state hospitals. However, if a district or special education local plan area that is required by this section to provide a representative from the district or special education local plan area does not do so, the county office shall provide a representative.

(b) The state hospital shall reimburse the ~~district, special education local plan area, or the county office local~~ *educational agency*, as the case may be, for the costs, including salary, of providing the representative.

(c) Once the individual is enrolled in the community program, the *local* educational agency providing special education shall be responsible for reviewing and revising the individualized education program with the participation of a representative of the state hospital and the parent. The *public* agency responsible for the individualized education program shall be responsible for all individual protections, including notification and due process.

SEC. 94. Section 56863 of the Education Code is amended to read:

56863. The state hospitals, as part of the notification to parents of pupils of their rights pursuant to the *federal* Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the *federal* Rehabilitation Act of 1973 (29 U.S.C. Sec. 701 et seq.), and this part and implementing regulations, shall notify parents of the right that their child can be considered for education programs other than on state hospital grounds.

For the purposes of this section, the term "parent of pupil" shall mean a parent, a legal guardian, a conservator, a person acting as

1 a parent of a child, or a surrogate parent appointed pursuant to
2 Section ~~300.515~~ 300.519 of Title 34 of the Code of Federal
3 Regulations.

4 Information and records concerning state hospital patients in the
5 possession of the Superintendent of Public Instruction shall be
6 treated as confidential under Section 5328 of the Welfare and
7 Institutions Code and the Federal Privacy Act of 1974, Public Law
8 93-579.

9 SEC. 95. Section 7570 of the Government Code is amended
10 to read:

11 7570. Ensuring maximum utilization of all state and federal
12 resources available to provide a child with a disability, as defined
13 in ~~paragraph (3) of Section 1401~~ Section 1401(3) of Title 20 of
14 the United States Code, with a free appropriate public education,
15 the provision of related services, as defined in ~~paragraph (22)~~
16 ~~of Section 1401~~ Section 1401(22) of Title 20 of the United States
17 Code, and designated instruction and services, as defined in Section
18 56363 of the Education Code, to a child with a disability, shall be
19 the joint responsibility of the Superintendent of Public Instruction
20 and the Secretary of *the Health and Welfare Human Services*
21 *Agency*. The Superintendent of Public Instruction shall ensure that
22 this chapter is carried out through monitoring and supervision.

23 SEC. 96. Section 7571 of the Government Code is amended
24 to read:

25 7571. The Secretary of *the Health and Welfare Human Services*
26 *Agency* may designate a department of state government to assume
27 the responsibilities described in Section 7570. The secretary, or
28 his or her designee, *also* shall ~~also~~ designate a single agency in
29 each county to coordinate the service responsibilities described in
30 Section 7572.

31 SEC. 97. Section 7572.5 of the Government Code is amended
32 to read:

33 7572.5. (a) When an assessment is conducted pursuant to
34 Article 2 (commencing with Section 56320) of Chapter 4 of Part
35 ~~30 of Division 4~~ of the Education Code, which determines that a
36 child is seriously emotionally disturbed, as defined in Section
37 ~~300.7~~ 300.8 of Title 34 of the Code of Federal Regulations, and
38 any member of the individualized education program team
39 recommends residential placement based on relevant assessment
40 information, the individualized education program team shall be

1 expanded to include a representative of the county mental health
2 department.

3 (b) The expanded individualized education program team shall
4 review the assessment and determine whether:

5 (1) The child's needs can reasonably be met through any
6 combination of nonresidential services, preventing the need for
7 out-of-home care.

8 (2) Residential care is necessary for the child to benefit from
9 educational services.

10 (3) Residential services are available ~~which~~ *that* address the
11 needs identified in the assessment and ~~which~~ *that* will ameliorate
12 the conditions leading to the seriously emotionally disturbed
13 designation.

14 (c) If the review required in subdivision (b) results in an
15 individualized education program ~~which~~ *that* calls for residential
16 placement, the individualized education program shall include all
17 the items outlined in Section 56345 of the Education Code, and
18 shall also include:

19 (1) Designation of the county mental health department as lead
20 case manager. Lead case management responsibility may be
21 delegated to the county welfare department by agreement between
22 the county welfare department and the designated mental health
23 department. The mental health department shall retain financial
24 responsibility for provision of case management services.

25 (2) Provision for a review of the case progress, the continuing
26 need for out-of-home placement, the extent of compliance with
27 the individualized education program, and progress toward
28 alleviating the need for out-of-home care, by the full individualized
29 education program team at least every six months.

30 (3) Identification of an appropriate residential facility for
31 placement with the assistance of the county welfare department
32 as necessary.

33 SEC. 98. Section 7576 of the Government Code is amended
34 to read:

35 7576. (a) The State Department of Mental Health, or any
36 community mental health service, as defined in Section 5602 of
37 the Welfare and Institutions Code, designated by the State
38 Department of Mental Health, are responsible for the provision of
39 mental health services, as defined in regulations by the State
40 Department of Mental Health, developed in consultation with the

1 State Department of Education, if required in the individualized
2 education program of a pupil. A local educational agency is not
3 required to place a pupil in a more restrictive educational
4 environment in order for the pupil to receive the mental health
5 services specified in his or her individualized education program
6 if the mental health services can be appropriately provided in a
7 less restrictive setting. It is the intent of the Legislature that the
8 local educational agency and the community mental health service
9 vigorously attempt to develop a mutually satisfactory placement
10 that is acceptable to the parent and addresses the educational and
11 mental health treatment needs of the pupil in a manner that is
12 cost-effective for both public agencies, subject to the requirements
13 of state and federal special education law, including the
14 requirement that the placement be appropriate and in the least
15 restrictive environment. For purposes of this section, “parent” is
16 as defined in Section 56028 of the Education Code.

17 (b) A local educational agency, individualized education
18 program team, or parent may initiate a referral for assessment of
19 the social and emotional status of a pupil, pursuant to Section
20 56320 of the Education Code. Based on the results of assessments
21 completed pursuant to Section 56320 of the Education Code, an
22 individualized education program team may refer a pupil who has
23 been determined to be an individual with exceptional needs as
24 defined in Section 56026 of the Education Code and who is
25 suspected of needing mental health services to a community mental
26 health service if the pupil meets all of the criteria in paragraphs
27 (1) to (5), inclusive. Referral packages shall include all
28 documentation required in subdivision (c), and shall be provided
29 immediately to the community mental health service.

30 (1) The pupil has been assessed by school personnel in
31 accordance with Article 2 (commencing with Section 56320) of
32 Chapter 4 of Part 30 of the Education Code. Local educational
33 agencies and community mental health services shall work
34 collaboratively to ensure that assessments performed prior to
35 referral are as useful as possible to the community mental health
36 service in determining the need for mental health services and the
37 level of services needed.

38 (2) The local educational agency has obtained written parental
39 consent for the referral of the pupil to the community mental health
40 service, for the release and exchange of all relevant information

1 between the local educational agency and the community mental
2 health service, and for the observation of the pupil by mental health
3 professionals in an educational setting.

4 (3) The pupil has emotional or behavioral characteristics that
5 are all of the following:

6 (A) Are observed by qualified educational staff in educational
7 and other settings, as appropriate.

8 (B) Impede the pupil from benefiting from educational services.

9 (C) Are significant as indicated by their rate of occurrence and
10 intensity.

11 (D) Are associated with a condition that cannot be described
12 solely as a social maladjustment or a temporary adjustment
13 problem, and cannot be resolved with short-term counseling.

14 (4) As determined using educational assessments, the pupil's
15 functioning, including cognitive functioning, is at a level sufficient
16 to enable the pupil to benefit from mental health services.

17 (5) The local educational agency, pursuant to Section 56331 of
18 the Education Code, has provided appropriate counseling and
19 guidance services, psychological services, parent counseling and
20 training, or social work services to the pupil pursuant to Section
21 56363 of the Education Code, or behavioral intervention as
22 specified in Section 56520 of the Education Code, as specified in
23 the individualized education program and the individualized
24 education program team has determined that the services do not
25 meet the educational needs of the pupil, or, in cases where these
26 services are clearly inadequate or inappropriate to meet the
27 educational needs of the pupil, the individualized education
28 program team has documented which of these services were
29 considered and why they were determined to be inadequate or
30 inappropriate.

31 (c) If referring a pupil to a community mental health service in
32 accordance with subdivision (b), the local educational agency or
33 the individualized education program team shall provide the
34 following documentation:

35 (1) Copies of the current individualized education program, all
36 current assessment reports completed by school personnel in all
37 areas of suspected disabilities pursuant to Article 2 (commencing
38 with Section 56320) of Chapter 4 of Part 30 of the Education Code,
39 and other relevant information, including reports completed by
40 other agencies.

1 (2) A copy of the parent's consent obtained as provided in
2 paragraph (2) of subdivision (b).

3 (3) A summary of the emotional or behavioral characteristics
4 of the pupil, including documentation that the pupil meets the
5 criteria set forth in paragraphs (3) and (4) of subdivision (b).

6 (4) A description of the counseling, psychological, and guidance
7 services, and other interventions that have been provided to the
8 pupil, as provided in the individualized education program of the
9 pupil, including the initiation, duration, and frequency of these
10 services, or an explanation of the reasons a service was considered
11 for the pupil and determined to be inadequate or inappropriate to
12 meet his or her educational needs.

13 (d) Based on preliminary results of assessments performed
14 pursuant to Section 56320 of the Education Code, a local
15 educational agency may refer a pupil who has been determined to
16 be, or is suspected of being, an individual with exceptional needs,
17 and is suspected of needing mental health services, to a community
18 mental health service if a pupil meets the criteria in paragraphs (1)
19 and (2). Referral packages shall include all documentation required
20 in subdivision (e) and shall be provided immediately to the
21 community mental health service.

22 (1) The pupil meets the criteria in paragraphs (2) to (4),
23 inclusive, of subdivision (b).

24 (2) Counseling and guidance services, psychological services,
25 parent counseling and training, social work services, and behavioral
26 or other interventions as provided in the individualized education
27 program of the pupil are clearly inadequate or inappropriate in
28 meeting his or her educational needs.

29 (e) If referring a pupil to a community mental health service in
30 accordance with subdivision (d), the local educational agency shall
31 provide the following documentation:

32 (1) Results of preliminary assessments to the extent they are
33 available and other relevant information including reports
34 completed by other agencies.

35 (2) A copy of the parent's consent obtained as provided in
36 paragraph (2) of subdivision (b).

37 (3) A summary of the emotional or behavioral characteristics
38 of the pupil, including documentation that the pupil meets the
39 criteria in paragraphs (3) and (4) of subdivision (b).

1 (4) Documentation that appropriate related educational and
2 designated instruction and services have been provided in
3 accordance with Sections ~~300.24~~ 300.34 and ~~300.26~~ 300.39 of
4 Title 34 of the Code of Federal Regulations.

5 (5) An explanation as to the reasons that counseling and
6 guidance services, psychological services, parent counseling and
7 training, social work services, and behavioral or other interventions
8 as provided in the individualized education program of the pupil
9 are clearly inadequate or inappropriate in meeting his or her
10 educational needs.

11 (f) The procedures set forth in this chapter are not designed for
12 use in responding to psychiatric emergencies or other situations
13 requiring immediate response. In these situations, a parent may
14 seek services from other public programs or private providers, as
15 appropriate. This subdivision does not change the identification
16 and referral responsibilities imposed on local educational agencies
17 under Article 1 (commencing with Section 56300) of Chapter 4
18 of Part 30 of the Education Code.

19 (g) Referrals shall be made to the community mental health
20 service in the county in which the pupil lives. If the pupil has been
21 placed into residential care from another county, the community
22 mental health service receiving the referral shall forward the
23 referral immediately to the community mental health service of
24 the county of origin, which shall have fiscal and programmatic
25 responsibility for providing or arranging for provision of necessary
26 services. In no event shall the procedures described in this
27 subdivision delay or impede the referral and assessment process.

28 (h) A county mental health agency does not have fiscal or legal
29 responsibility for any costs it incurs prior to the approval of an
30 individualized education program, except for costs associated with
31 conducting a mental health assessment.

32 SEC. 99. Section 7579.5 of the Government Code is amended
33 to read:

34 7579.5. (a) In accordance with ~~subparagraph (B) of paragraph~~
35 ~~(2) of subsection (b) of Section 1415~~ *Section 1415(b)(2)(B)* of
36 Title 20 of the United States Code, a local educational agency shall
37 make reasonable efforts to ensure the appointment of a surrogate
38 parent not more than 30 days after there is a determination by the
39 local educational agency that a child needs a surrogate parent. A
40 local educational agency shall appoint a surrogate parent for a

1 child in accordance with Section ~~300.515~~ 300.519 of Title 34 of
2 the Code of Federal Regulations under one or more of the following
3 circumstances:

4 (1) (A) The child is adjudicated a dependent or ward of the
5 court pursuant to Section 300, 601, or 602 of the Welfare and
6 Institutions Code upon referral of the child to the local educational
7 agency for special education and related services, or if the child
8 already has a valid individualized education program, (B) the court
9 has specifically limited the right of the parent or guardian to make
10 educational decisions for the child, and (C) the child has no
11 responsible adult to represent him or her pursuant to Section 361
12 or 726 of the Welfare and Institutions Code or Section 56055 of
13 the Education Code.

14 (2) No parent for the child can be identified.

15 (3) The local educational agency, after reasonable efforts, cannot
16 discover the location of a parent.

17 (b) When appointing a surrogate parent, the local educational
18 agency ~~shall~~, as a first preference, *shall* select a relative caretaker,
19 foster parent, or court-appointed special advocate, if any of these
20 individuals exists and is willing and able to serve. If none of these
21 individuals is willing or able to act as a surrogate parent, the local
22 educational agency shall select the surrogate parent of its choice.
23 If the child is moved from the home of the relative caretaker or
24 foster parent who has been appointed as a surrogate parent, the
25 local educational agency shall appoint another surrogate parent if
26 a new appointment is necessary to ensure adequate representation
27 of the child.

28 (c) For ~~the~~ purposes of this section, the surrogate parent shall
29 serve as the child's parent and shall have the rights relative to the
30 child's education that a parent has under Title 20 (commencing
31 with Section 1400) of the United States Code and pursuant to Part
32 300 of Title 34 (commencing with Section 300.1) of the Code of
33 Federal Regulations. The surrogate parent may represent the child
34 in matters relating to special education and related services,
35 including the identification, assessment, instructional planning and
36 development, educational placement, reviewing and revising the
37 individualized education program, and in all other matters relating
38 to the provision of a free appropriate public education of the child.
39 Notwithstanding any other provision of law, this representation
40 shall include the provision of written consent to the individualized

1 education program including nonemergency medical services,
2 mental health treatment services, and occupational or physical
3 therapy services pursuant to this chapter.

4 (d) The surrogate parent is required to meet with the child at
5 least one time. He or she may also meet with the child on additional
6 occasions, attend the child's individualized education program
7 meetings, review the child's educational records, consult with
8 persons involved in the child's education, and sign any consent
9 relating to individualized education program purposes.

10 (e) As far as practical, a surrogate parent should be culturally
11 sensitive to his or her assigned child.

12 (f) The surrogate parent shall comply with federal and state law
13 pertaining to the confidentiality of student records and information
14 and shall use discretion in the necessary sharing of the information
15 with appropriate persons for the purpose of furthering the interests
16 of the child.

17 (g) The surrogate parent may resign from his or her appointment
18 only after he or she gives notice to the local educational agency.

19 (h) The local educational agency shall terminate the appointment
20 of a surrogate parent if (1) the person is not properly performing
21 the duties of a surrogate parent or (2) the person has an interest
22 that conflicts with interests of the child entrusted to his or her care.

23 (i) Individuals who would have a conflict of interest in
24 representing the child, as specified ~~under federal regulations in~~
25 *Section 300.519(d) of Title 34 of the Code of Federal Regulations*,
26 may not be appointed as a surrogate parent. "An individual who
27 would have a conflict of interest," for purposes of this section,
28 means a person having any interests that might restrict or bias his
29 or her ability to advocate for all of the services required to ensure
30 that the child has a free appropriate public education.

31 (j) Except for individuals who have a conflict of interest in
32 representing the child, and notwithstanding any other law or
33 regulation, individuals who may serve as surrogate parents include,
34 but are not limited to, foster care providers, retired teachers, social
35 workers, and probation officers who are not employees of the State
36 Department of Education, the local educational agency, or any
37 other agency that is involved in the education or care of the child.

38 (1) A public agency authorized to appoint a surrogate parent
39 under this section may select a person who is an employee of a

1 nonpublic agency that only provides noneducational care for the
2 child and who meets the other standards of this section.

3 (2) A person who otherwise qualifies to be a surrogate parent
4 under this section is not an employee of the local educational
5 agency solely because he or she is paid by the local educational
6 agency to serve as a surrogate parent.

7 (k) The surrogate parent may represent the child until (1) the
8 child is no longer in need of special education, (2) the minor
9 reaches 18 years of age, unless the child chooses not to make
10 educational decisions for himself or herself, or is deemed by a
11 court to be incompetent, (3) another responsible adult is appointed
12 to make educational decisions for the minor, or (4) the right of the
13 parent or guardian to make educational decisions for the minor is
14 fully restored.

15 (l) The surrogate parent and the local educational agency
16 appointing the surrogate parent shall be held harmless by the State
17 of California when acting in their official capacity except for acts
18 or omissions that are found to have been wanton, reckless, or
19 malicious.

20 (m) The State Department of Education shall develop a model
21 surrogate parent training module and manual that shall be made
22 available to local educational agencies.

23 (n) Nothing in this section may be interpreted to prevent a parent
24 or guardian of an individual with exceptional needs from
25 designating another adult individual to represent the interests of
26 the child for educational and related services.

27 (o) If funding for implementation of this section is provided, it
28 may only be provided from Item 6110-161-0890 of Section 2.00
29 of the annual Budget Act.

30 SEC. 100. Section 7579.6 of the Government Code is amended
31 to read:

32 7579.6. (a) In accordance with ~~subparagraph (A) of paragraph~~
33 ~~(2) of subsection (b) of Section 1415~~ *Section 1415(b)(2)(A)* of
34 Title 20 of the United States Code, in the case of a child who is a
35 ward of the state, the surrogate parent described in Section 7579.5
36 may alternatively be appointed by the judge overseeing the child's
37 care provided that the surrogate meets the requirements of Section
38 7579.5.

39 (b) In the case of an unaccompanied homeless youth as defined
40 in paragraph (6) of Section 725 of the federal McKinney-Vento

1 Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)), the local
2 educational agency shall appoint a surrogate in accordance with
3 Section 7579.5 and Section 300.519(f) of Title 34 of the Code of
4 Federal Regulations.

5 SEC. 101. Section 7585 of the Government Code is amended
6 to read:

7 7585. (a) Whenever any department or any local agency
8 designated by that department fails to provide a related service or
9 designated instruction and service required pursuant to Section
10 7575 or 7576, and specified in the child's individualized education
11 program, the parent, adult pupil, or any local education agency
12 referred to in this chapter, shall submit a written notification of
13 the failure to provide the service to the Superintendent of Public
14 Instruction or the Secretary of ~~the Health and Welfare~~ Human
15 Services Agency.

16 (b) When either the Superintendent of Public Instruction or the
17 Secretary of ~~the Health and Welfare~~ Human Services Agency
18 receives a written notification of the failure to provide a service
19 as specified in subdivision (a), a copy shall immediately be
20 transmitted to the other party. ~~The superintendent~~ Superintendent
21 of Public Instruction, or his or her designee, and the secretary, or
22 his or her designee, shall meet to resolve the issue within 15
23 calendar days of receipt of the notification. A written copy of the
24 meeting resolution shall be mailed to the parent, the local education
25 agency, and affected departments, within 10 days of the meeting.

26 (c) If the issue cannot be resolved within 15 calendar days to
27 the satisfaction of the superintendent and the secretary, they shall
28 jointly submit the issue in writing to the Director of the Office of
29 Administrative Hearings, or his or her designee, in the State
30 Department of General Services.

31 (d) The Director of the Office of Administrative Hearings, or
32 his or her designee, shall review the issue and submit his or her
33 findings in the case to the superintendent and the secretary within
34 30 calendar days of receipt of the case. The decision of the Director
35 of the Office of Administrative Hearings, or his or her designee,
36 shall be binding on the departments and their designated agencies
37 who are parties to the dispute.

38 (e) If the meeting, conducted pursuant to subdivision (b), fails
39 to resolve the issue to the satisfaction of the parent or local
40 education agency, either party may appeal to the Director of the

1 Office of Administrative Hearings, whose decision shall be the
2 final administrative determination and binding on all parties.

3 (f) Whenever notification is filed pursuant to subdivision (a),
4 the pupil affected by the dispute shall be provided with the
5 appropriate related service or designated instruction and service
6 pending resolution of the dispute, if the pupil had been receiving
7 the service. The Superintendent of Public Instruction and the
8 Secretary of *the Health and Welfare Human Services Agency* shall
9 ensure that funds are available for provision of the service pending
10 resolution of the issue pursuant to subdivision (e).

11 (g) Nothing in this section prevents a parent or adult pupil from
12 filing for a due process hearing under Section 7586.

13 (h) The contract between the State Department of Education
14 and the Office of Administrative Hearings for conducting due
15 process hearings shall include payment for services rendered by
16 the Office of Administrative Hearings which are required by this
17 section.

18 SEC. 102. Section 7586.5 of the Government Code is amended
19 to read:

20 7586.5. Not later than January 1, 1988, the Superintendent of
21 Public Instruction and the Secretary of *the Health and Welfare*
22 *Human Services Agency jointly* shall ~~jointly~~ submit to the
23 Legislature and the Governor a report on the implementation of
24 this chapter. The report shall include, but not be limited to,
25 information regarding the number of complaints and due process
26 hearings resulting from this chapter.

27 SEC. 103. Section 7586.6 of the Government Code is amended
28 to read:

29 7586.6. (a) The Superintendent of Public Instruction and the
30 Secretary of *the Health and Welfare Human Services Agency* shall
31 ensure that the State Department of Education and the State
32 Department of Mental Health enter into an interagency agreement
33 by January 1, 1998. It is the intent of the Legislature that the
34 agreement include, but not be limited to, procedures for ongoing
35 joint training, technical assistance for state and local personnel
36 responsible for implementing this chapter, protocols for monitoring
37 service delivery, and a system for compiling data on program
38 operations.

39 (b) It is the intent of the Legislature that the designated local
40 agencies of the State Department of Education and the State

1 Department of Mental Health update their interagency agreements
2 for services specified in this chapter at the earliest possible time.
3 It is the intent of the Legislature that the state and local interagency
4 agreements be updated at least every three years or earlier as
5 necessary.

6 SEC. 104. Section 7586.7 of the Government Code is amended
7 to read:

8 7586.7. The Superintendent of Public Instruction and the
9 Secretary of ~~the Health and Welfare~~ *Human Services Agency jointly*
10 shall ~~jointly~~ prepare and implement within existing resources a
11 plan for in-service training of state and local personnel responsible
12 for implementing the provisions of this chapter.

13 SEC. 105. Section 95001 of the Government Code is amended
14 to read:

15 95001. (a) The Legislature hereby finds and declares all of the
16 following:

17 (1) There is a need to provide appropriate early intervention
18 services individually designed for infants and toddlers from birth
19 through two years of age, who have disabilities or are at risk of
20 having disabilities, to enhance their development and to minimize
21 the potential for developmental delays.

22 (2) Early intervention services for infants and toddlers with
23 disabilities or at risk represent an investment of resources, in that
24 these services reduce the ultimate costs to our society, by
25 minimizing the need for special education and related services in
26 later school years and by minimizing the likelihood of
27 institutionalization. These services also maximize the ability of
28 families to better provide for the special needs of their child. Early
29 intervention services for infants and toddlers with disabilities
30 maximize the potential to be effective in the context of daily life
31 and activities, including the potential to live independently, and
32 exercise the full rights of citizenship. The earlier intervention is
33 started, the greater is the ultimate cost-effectiveness and the higher
34 is the educational attainment and quality of life achieved by
35 children with disabilities.

36 (3) The family is the constant in the child's life, while the service
37 system and personnel within those systems fluctuate. Because the
38 primary responsibility of an infant or toddler's well-being rests
39 with the family, services should support and enhance the family's

1 capability to meet the special developmental needs of their infant
2 or toddler with disabilities.

3 (4) Family to family support strengthens families' ability to
4 fully participate in services planning and their capacity to care for
5 their infant or toddler with disabilities.

6 (5) Meeting the complex needs of infants with disabilities and
7 their families requires active state and local coordinated,
8 collaborative and accessible service delivery systems that are
9 flexible, culturally competent and responsive to family identified
10 needs. When health, developmental, educational and social
11 programs are coordinated, they are proven to be cost-effective, not
12 only for systems, but for families as well.

13 (6) Family-professional collaboration contributes to changing
14 the ways that early intervention services are provided and to
15 enhancing their effectiveness.

16 (7) Infants and toddlers with disabilities are a part of their
17 communities, and as citizens make valuable contributions to society
18 as a whole.

19 (b) Therefore, it is the intent of the Legislature that:

20 (1) Funding provided under Part ~~H~~ C of the *federal* Individuals
21 with Disabilities Education Act (20 U.S.C. Sec. ~~1471~~ 1431 et seq.),
22 be used to improve and enhance early intervention services as
23 defined in this title by developing innovative ways of providing
24 family focused, coordinated services, which are built upon existing
25 systems.

26 (2) The State Department of Developmental Services, the
27 ~~California~~ State Department of Education, the State Department
28 of Health *Care* Services, the State Department of Mental Health,
29 the State Department of Social Services, and the State Department
30 of Alcohol and Drug Programs coordinate services to infants and
31 toddlers with disabilities and their families. These agencies need
32 to collaborate with families and communities to provide a
33 family-centered, comprehensive, multidisciplinary, interagency
34 community-based, early intervention system for infants and
35 toddlers with disabilities.

36 (3) Families be well informed, supported, and respected as
37 capable and collaborative decisionmakers regarding services for
38 their child.

39 (4) Professionals be supported to enhance their training and
40 maintain a high level of expertise in their field, as well as

1 knowledge of what constitutes most effective early intervention
2 practices.

3 (5) Families and professionals join in collaborative partnerships
4 to develop early intervention services which meet the needs of
5 infants and toddlers with disabilities, and that such partnerships
6 be the basis for the development of services which meet the needs
7 of the culturally and linguistically diverse population of California.

8 (6) To the maximum extent possible, infants and toddlers with
9 disabilities and their families be provided services in the most
10 natural environment, and include the use of natural supports and
11 existing community resources.

12 (7) The services delivery system be responsive to the families
13 and children it serves within the context of cooperation and
14 coordination among the various agencies.

15 (8) Early intervention program quality be assured and maintained
16 through established early intervention program and personnel
17 standards.

18 (9) The early intervention system be responsive to public input
19 and participation in the development of implementation policies
20 and procedures for early intervention services through the forum
21 of an interagency coordinating council established pursuant to
22 federal regulations under Part-H C of the *federal* Individuals with
23 Disabilities Education Act.

24 (c) It is not the intent of the Legislature to require the State
25 Department of Education to implement this title unless adequate
26 reimbursement, as specified and agreed to by the department, is
27 provided to the department from federal funds from Part-H C of
28 the *federal* Individuals with Disabilities Education Act.

29 SEC. 106. Section 95003 of the Government Code, as added
30 by Section 2 of Chapter 945 of the Statutes of 1993, is amended
31 to read:

32 95003. (a) The state's participation in Part-H C of the *federal*
33 Individuals with Disabilities Education Act (20 U.S.C. Sec. ~~1471~~
34 *1431* et seq.) shall be contingent on the receipt of federal funds to
35 cover the costs of complying with the federal statutes and
36 regulations that impose new requirements on the state. The State
37 Department of Developmental Services and the State Department
38 of Education *annually* shall ~~annually~~ report to the Department of
39 Finance during preparation of the Governor's Budget, and the May

1 revision, the budget year costs and federal funds projected to be
2 available.

3 (b) If the amount of funding provided by the federal government
4 pursuant to Part ~~H~~ C of the *federal* Individuals with Disabilities
5 Education Act for the 1993–94 fiscal year, or any fiscal year
6 thereafter, is not sufficient to fund the full increased costs of
7 participation in this federal program by the local education
8 agencies, as required pursuant to this title, for infants and toddlers
9 from birth through two years of age identified pursuant to Section
10 95014, and that lack of federal funding would require an increased
11 contribution from the General Fund or a contribution from a local
12 educational agency in order to fund those required and
13 supplemental costs, the state shall terminate its participation in the
14 program. Termination of the program shall occur on July 1 if local
15 education agencies have been notified of the termination prior to
16 March 10 of that calendar year. If this notification is provided after
17 March 10 of a calendar year, then termination shall not occur earlier
18 than July 1 of the subsequent calendar year. The voluntary
19 contribution by a state or local agency of funding for any of the
20 programs or services required pursuant to this title shall not
21 constitute grounds for terminating the state’s participation in that
22 federal program. It is the intent of the Legislature that if the
23 program terminates, the termination shall be carried out in an
24 orderly manner with notification of parents and certificated
25 personnel.

26 (c) This title shall remain in effect only until the state terminates
27 its participation in Part ~~H~~ C of the *federal* Individuals with
28 Disabilities Education Act (20 U.S.C. Sec. ~~1471~~ 1431 et seq.) for
29 individuals from birth through two years of age and notifies the
30 Secretary of the Senate of the termination, and as of that later date
31 is repealed. As the lead agency, the State Department of
32 Developmental Services shall, upon notification by the Department
33 of Finance or the State Department of Education as to the
34 insufficiency of federal funds and the termination of this program,
35 be responsible for the payment of services pursuant to this title
36 when no other agency or department is required to make these
37 payments.

38 SEC. 107. Section 95006 of the Government Code is amended
39 to read:

1 95006. This title shall be administered under the shared
2 direction of the Secretary of the Health and ~~Welfare~~ *Human*
3 *Services* Agency and the Superintendent of Public Instruction. The
4 planning, development, implementation, and monitoring of the
5 statewide system of early intervention services shall be conducted
6 by the State Department of Developmental Services in
7 collaboration with the State Department of Education with the
8 advice and assistance of an interagency coordinating council
9 established pursuant to federal regulations.

10 SEC. 108. Section 95007 of the Government Code is amended
11 to read:

12 95007. The State Department of Developmental Services shall
13 serve as the lead agency responsible for administration and
14 coordination of the statewide system. The specific duties and
15 responsibilities of the State Department of Developmental Services
16 shall include, but are not limited to, all of the following:

17 (a) Establishing a single point of contact with the federal Office
18 of Special Education Programs for the administration of Part-~~H~~ *C*
19 of the *federal* Individuals with Disabilities Education Act.

20 (b) Administering the state early intervention system in
21 accordance with Part-~~H~~ *C* of the *federal* Individuals with
22 Disabilities Education Act (20 U.S.C. Sec. ~~1471~~ *1431* et seq.), and
23 applicable regulations and approved state application.

24 (c) Administering mandatory and discretionary components as
25 specified in Sections 95022 and 95024.

26 (d) Administering fiscal arrangements and interagency
27 agreements with participating agencies and community-based
28 organizations to implement this title.

29 (e) Establishing interagency procedures, including the
30 designation of local coordinating structures, as are necessary to
31 share agency information and to coordinate policymaking activities.

32 (f) Adopting written procedures for receiving and resolving
33 complaints regarding violations of Part-~~H~~ *C* of the *federal*
34 Individuals with Disabilities Education Act by public agencies
35 covered under this title, as specified in Section ~~1476(b)(9)~~
36 *1435(a)(10)* of Title 20 of the United States Code and appropriate
37 federal regulations.

38 (g) Establishing, adopting, and implementing procedural
39 safeguards that comply with the requirements of Part-~~H~~ *C* of the
40 *federal* Individuals with Disabilities Education Act, as specified

1 in Section ~~1480~~ 1439 of Title 20 of the United States Code and
2 appropriate federal regulations.

3 (h) (1) Monitoring of agencies, institutions, and organizations
4 receiving assistance under this title.

5 (2) Monitoring shall be conducted by interagency teams that
6 are sufficiently trained to ensure compliance. Interagency teams
7 shall consist of, but not be limited to, representatives from the
8 State Department of Developmental Services, the State Department
9 of Education, the interagency coordinating council, or a local
10 family resource center or network parent, direct service provider,
11 or any other agency responsible for providing early intervention
12 services.

13 (3) All members of an interagency team shall have access to all
14 information that is subject to review. Members of each interagency
15 team shall maintain the confidentiality of the information, and
16 each member of the interagency team shall sign a written agreement
17 of confidentiality.

18 (4) A summary of monitoring issues and findings shall be
19 forwarded biannually to the interagency coordinating council for
20 review.

21 (i) Establishing innovative approaches to information
22 distribution, family support services, and interagency coordination
23 at the local level.

24 (j) Ensuring the provision of appropriate early intervention
25 services to all infants eligible under Part ~~H~~ C of the *federal*
26 Individuals with Disabilities Education Act (20 U.S.C. Sec. ~~1471~~
27 1431 et seq.) and under Section 95014, except for those infants
28 who have solely a low incidence disability as defined in Section
29 56026.5 of the Education Code and who are not eligible for services
30 under the Lanterman Development Disabilities Services Act
31 (Division 4.5 (commencing with Section 4500) of the Welfare and
32 Institutions Code).

33 The development and implementation of subdivisions (e) to (h),
34 inclusive, shall be a collaborative effort between the State
35 Department of Developmental Services and the State Department
36 of Education. In establishing the written procedures for receiving
37 and resolving complaints as specified in subdivision (f) and in
38 establishing and implementing procedural safeguards as specified
39 in subdivision (g), it is the intent of the Legislature that these
40 procedures be identical for all infants served under this act and

1 shall be in accordance with Section 303.400 and ~~subdivision (b)~~
2 ~~of Section 303.420~~ *Section 303.420(b)* of Title 34 of the Code of
3 Federal Regulations. The procedural safeguards and due process
4 requirements established under this title shall replace and be used
5 in lieu of due process procedures contained in Chapter 1
6 (commencing with Section 4500) of Division 4.5 of the Welfare
7 and Institutions Code and Part 30 (commencing with Section
8 56500) of the Education Code for infants and their families eligible
9 under this title.

10 SEC. 109. Section 95008 of the Government Code is amended
11 to read:

12 95008. The State Department of Education shall be responsible
13 for administering services and programs for infants with solely
14 visual, hearing, and severe orthopedic impairments, and any
15 combination thereof, who meet the criteria in Sections 56026 and
16 56026.5 of the Education Code, and in ~~subdivisions (a), (b), (d),~~
17 ~~or (e) of Section 3030~~ *Section 3030(a), (b), (d), or (e)* of, and
18 Section 3031 of, Title 5 of the California Code of Regulations and
19 Part H C of the *federal* Individuals with Disabilities Education Act
20 (20 U.S.C. Section ~~1471~~ *1431* et seq.) and who are not eligible for
21 services under the Lanterman Developmental Disabilities Services
22 Act (Division 4.5 (commencing with Section 4500) of the Welfare
23 and Institutions Code).

24 SEC. 110. Section 95014 of the Government Code is amended
25 to read:

26 95014. (a) The term “eligible infant or toddler” for the
27 purposes of this title means infants and toddlers from birth through
28 two years of age, for whom a need for early intervention services,
29 as specified in the *federal* Individuals with Disabilities Education
30 Act (20 U.S.C. Sec. ~~1471~~ *1431* et seq.) and applicable regulations,
31 is documented by means of assessment and evaluation as required
32 in Sections 95016 and 95018 and who meet one of the following
33 criteria:

34 (1) Infants and toddlers with a developmental delay in one or
35 more of the following five areas: cognitive development; physical
36 and motor development, including vision and hearing;
37 communication development; social or emotional development;
38 or adaptive development. Developmentally delayed infants and
39 toddlers are those who are determined to have a significant
40 difference between the expected level of development for their

1 age and their current level of functioning. This determination shall
2 be made by qualified personnel who are recognized by, or part of,
3 a multidisciplinary team, including the parents.

4 (2) Infants and toddlers with established risk conditions, who
5 are infants and toddlers with conditions of known etiology or
6 conditions with established harmful developmental consequences.
7 The conditions shall be diagnosed by a qualified personnel
8 recognized by, or part of, a multidisciplinary team, including the
9 parents. The condition shall be certified as having a high
10 probability of leading to developmental delay if the delay is not
11 evident at the time of diagnosis.

12 (3) Infants and toddlers who are at high risk of having substantial
13 developmental disability due to a combination of biomedical risk
14 factors, the presence of which is diagnosed by qualified clinicians
15 recognized by, or part of, a multidisciplinary team, including the
16 parents.

17 (b) Regional centers and local education agencies shall be
18 responsible for ensuring that eligible infants and toddlers are served
19 as follows:

20 (1) The State Department of Developmental Services and
21 regional centers shall be responsible for the provision of
22 appropriate early intervention services in accordance with Part-H
23 C of the *federal* Individuals with Disabilities Education Act (20
24 U.S.C. Sec. ~~1471~~ 1431 et seq.) for all infants eligible under Section
25 95014, except for those infants with solely a visual, hearing, or
26 severe orthopedic impairment, or any combination thereof, who
27 meet the criteria in Sections 56026 and 56026.5 of the Education
28 Code, and in ~~subdivisions (a), (b), (d), or (e) of Section 3030~~
29 *Section 3030(a), (b), (d), or (e)* of, and Section 3031 of, Title 5 of
30 the California Code of Regulations.

31 (2) The State Department of Education and local education
32 agencies shall be responsible for the provision of appropriate early
33 intervention services in accordance with Part-H C of the *federal*
34 Individuals with Disabilities Education Act (20 U.S.C. Sec. ~~1471~~
35 1431 et seq.) for infants with solely a visual, hearing, or severe
36 orthopedic impairment, or any combination thereof who meet the
37 criteria in Sections 56026 and 56026.5 of the Education Code, and
38 in ~~subdivisions (a), (b), (d), or (e) of Section 3030~~ *Section 3030(a),*
39 *(b), (d), or (e)* of, and Section 3031 of, Title 5 of the California
40 Code of Regulations, and who are not eligible for services under

1 the Lanterman Developmental Services Disabilities Act (Division
2 4.5 (commencing with Section 4500) of the Welfare and
3 Institutions Code).

4 (c) For infants and toddlers and their families who are eligible
5 to receive services from both a regional center and a local education
6 agency, the regional center shall be the agency responsible for
7 providing or purchasing appropriate early intervention services
8 that are beyond the mandated responsibilities of local education
9 agencies. The local education agency shall provide special
10 education services up to its funded program capacity as established
11 annually by the State Department of Education in consultation
12 with the State Department of Developmental Services and the
13 Department of Finance.

14 (d) No agency or multidisciplinary team, including any agency
15 listed in Section 95012, shall presume or determine eligibility,
16 including eligibility for medical services, for any other agency.
17 However, regional centers and local education agencies shall
18 coordinate intake, evaluation, assessment, and individualized
19 family service plans for infants and toddlers and their families who
20 are served by an agency.

21 (e) Upon termination of the program pursuant to Section 95003,
22 the State Department of Developmental Services shall be
23 responsible for the payment of services pursuant to this title.

24 SEC. 111. Section 95016 of the Government Code is amended
25 to read:

26 95016. (a) Each infant or toddler referred for evaluation for
27 early intervention services shall have a timely, comprehensive,
28 multidisciplinary evaluation of his or her needs and level of
29 functioning in order to determine eligibility. In the process of
30 determining eligibility of an infant or toddler, an assessment shall
31 be conducted by qualified personnel, and shall include a family
32 interview, to identify the child's unique strengths and needs and
33 the services appropriate to meet those needs; and the resources,
34 priorities and concerns of the family and the supports and services
35 necessary to enhance the family's capacity to meet the
36 developmental needs of their infant or toddler. Evaluations and
37 assessments shall be shared and utilized between the regional
38 center and the local education agency, and any other agency
39 providing services for the eligible infant or toddler, as appropriate.
40 Family assessments shall be family directed and voluntary on the

1 part of the family. Families shall be afforded the opportunity to
2 participate in all decisions regarding eligibility and services.

3 (b) Regional centers and local education agencies or their
4 designees shall be responsible for ensuring that the requirements
5 of this section are implemented. The procedures, requirements,
6 and timelines for evaluation and assessment shall be consistent
7 with the statutes and regulations under Part ~~H~~ C of the *federal*
8 Individuals with Disabilities Education Act (20 U.S.C. ~~1471~~ *Sec.*
9 *1431* et seq.), applicable regulations, and this title, and shall be
10 specified in regulations adopted pursuant to Section 95028.

11 SEC. 112. Section 95018 of the Government Code is amended
12 to read:

13 95018. Each eligible infant or toddler and family shall be
14 provided a service coordinator who will be responsible for
15 facilitating the implementation of the individualized family service
16 plan and for coordinating with other agencies and persons
17 providing services to the family. The qualifications, responsibilities,
18 and functions of service coordinators shall be consistent with the
19 statutes and regulations under Part ~~H~~ C and this title, and shall be
20 specified in regulations adopted pursuant to Section 95028. The
21 State Department of Developmental Services shall ensure that
22 service coordinators, as defined in federal law, meet federal and
23 state regulation requirements, are trained to work with infants and
24 their families, and meet competency requirements set forth in
25 ~~subsection (d) of Section 303.22~~ *Section 303.22(d)* of Title 34 of
26 the Code of Federal Regulations. Service coordinator caseloads
27 shall be an overall average of 62 consumers to each staff member.
28 Pursuant to Section 303.521 of Title 34 of the Code of Federal
29 Regulations, service coordination is not subject to any fees that
30 might be established for any other federal or state program.

31 SEC. 113. Section 95020 of the Government Code is amended
32 to read:

33 95020. (a) ~~Each~~ *An* eligible infant or toddler shall have an
34 individualized family service plan. The individualized family
35 service plan shall be used in place of an individualized program
36 plan required pursuant to Sections 4646 and 4646.5 of the Welfare
37 and Institutions Code, the individual education plan required
38 pursuant to Section 56340 of the Education Code, or any other
39 applicable service plan.

1 (b) For an infant or toddler who has been evaluated for the first
2 time, a meeting to share the results of the evaluation, to determine
3 eligibility and, for children who are eligible, to develop the initial
4 individualized family service plan shall be conducted within 45
5 calendar days of receipt of the written referral. Evaluation results
6 and determination of eligibility may be shared in a meeting with
7 the family prior to the individualized family service plan. Written
8 parent consent to evaluate and assess shall be obtained within the
9 45-day timeline. A regional center, local education agency, or their
10 designees shall initiate and conduct this meeting. Families shall
11 be afforded the opportunity to participate in all decisions regarding
12 eligibility and services.

13 (c) Parents shall be fully informed of their rights, including the
14 right to invite any other person, including a family member or an
15 advocate or peer parent, or any or all of them, to accompany them
16 to any or all individualized family service plan meetings. With
17 parental consent, a referral shall be made to the local family
18 resource center or network.

19 (d) The individualized family service plan shall be in writing
20 and shall address all of the following:

21 (1) A statement of the infant or toddler's present levels of
22 physical development including vision, hearing, and health status,
23 cognitive development, communication development, social and
24 emotional development, and adaptive developments.

25 (2) With the concurrence of the family, a statement of the
26 family's concerns, priorities, and resources related to meeting the
27 special developmental needs of the eligible infant or toddler.

28 (3) A statement of the major outcomes expected to be achieved
29 for the infant or toddler and family where services for the family
30 are related to meeting the special developmental needs of the
31 eligible infant or toddler.

32 (4) The criteria, procedures, and timelines used to determine
33 the degree to which progress toward achieving the outcomes is
34 being made and whether modifications or revisions are necessary.

35 (5) A statement of the specific early intervention services
36 necessary to meet the unique needs of the infant or toddler as
37 identified in paragraph (3), including, but not limited to, the
38 frequency, intensity, location, duration, and method of delivering
39 the services, and ways of providing services in natural
40 environments.

1 (6) A statement of the agency responsible for providing the
2 identified services.

3 (7) The name of the service coordinator who shall be responsible
4 for facilitating implementation of the plan and coordinating with
5 other agencies and persons.

6 (8) The steps to be taken to ensure transition of the infant or
7 toddler upon reaching three years of age to other appropriate
8 services. These may include, as appropriate, special education or
9 other services offered in natural environments.

10 (9) The projected dates for the initiation of services in paragraph
11 (5) and the anticipated duration of those services.

12 (e) Each service identified on the individualized family service
13 plan shall be designated as one of three types:

14 (1) An early intervention service, as defined in Part-H C (20
15 U.S.C. ~~Section 1472(2)~~ *Sec. 1432(4)*), and applicable regulations,
16 that is provided or purchased through the regional center, local
17 education agency, or other participating agency. The State
18 Department of Health Services, State Department of Social
19 Services, State Department of Mental Health, and State Department
20 of Alcohol and Drug Programs shall provide services in accordance
21 with state and federal law and applicable regulations, and up to
22 the level of funding as appropriated by the Legislature. Early
23 intervention services identified on an individualized family service
24 plan that exceed the funding, statutory, and regulatory requirements
25 of these departments shall be provided or purchased by regional
26 centers or local education agencies under subdivisions (b) and (c)
27 of Section 95014. The State Department of Health Services, State
28 Department of Social Services, State Department of Mental Health,
29 and State Department of Alcohol and Drug Programs shall not be
30 required to provide early intervention services over their existing
31 funding, statutory, and regulatory requirements.

32 (2) Any other service, other than those specified in paragraph
33 (1), which the eligible infant or toddler or his or her family may
34 receive from other state programs, subject to the eligibility
35 standards of those programs.

36 (3) A referral to a nonrequired service that may be provided to
37 an eligible infant or toddler or his or her family. Nonrequired
38 services are those services that are not defined as early intervention
39 services or do not relate to meeting the special developmental
40 needs of an eligible infant or toddler related to the disability, but

1 which may be helpful to the family. The granting or denial of
2 nonrequired services by any public or private agency is not subject
3 to appeal under this title.

4 (f) An annual review, and other periodic reviews of the
5 individualized family service plan for an infant's or toddler and
6 the infant or toddler's family shall be conducted to determine the
7 degree of progress that is being made in achieving the outcomes
8 specified in the plan and whether modification or revision of the
9 outcomes or services is necessary. The frequency, participants,
10 purpose, and required processes for annual and periodic reviews
11 shall be consistent with the statutes and regulations under Part-H
12 C and this title, and shall be specified in regulations adopted
13 pursuant to Section 95028.

14 SEC. 114. Section 95024 of the Government Code is amended
15 to read:

16 95024. (a) Any increased cost to local educational agencies
17 due to the implementation of this title shall be funded from the
18 Part-H C federal funds provided for the purposes of this title.

19 (b) Any increased costs to regional centers due to the
20 implementation of this title shall be funded from the Part-H C
21 federal funds provided for the purposes of this title.

22 (c) The annual Budget Act shall specify the amount of federal
23 Part-H C funds allocated for local assistance and for state
24 operations individually, for the State Department of Developmental
25 Services, and for the State Department of Education.

26 (d) If federal funds are available after mandatory components
27 and increased costs in subdivisions (a) and (b), if any, are funded,
28 the lead agency, in consultation with the State Department of
29 Education, may do the following:

30 (1) Designate local interagency coordination areas throughout
31 the state and allocate available Part-H C funds to fund interagency
32 coordination activities, including, but not limited to, outreach and
33 public awareness, and interagency approaches to service planning
34 and delivery. If the lead agency chooses to designate and fund
35 local interagency coordination areas, the lead agency shall first
36 offer to enter into a contract with the regional center or a local
37 education agency. If the regional center or any of the local
38 education agencies do not accept the offer, the lead agency, in
39 consultation with the State Department of Education and the
40 approval of the regional center and local education agencies in the

1 area, may directly enter into a contract with a private, nonprofit
2 organization. Nothing in this section shall preclude a regional
3 center or local education agency that enters into a contract with
4 the lead agency from subcontracting with a private, nonprofit
5 organization.

6 (2) Allocate funds to support family resource services, including,
7 but not limited to, parent-to-parent support, information
8 dissemination and referral, public awareness, family-professional
9 collaboration activities, and transition assistance for families.

10 (e) If an expenditure plan is developed under subdivision (d),
11 the lead agency, in consultation with the State Department of
12 Education, shall give high priority to funding family resource
13 services.

14 (f) Nothing in this section shall be construed to limit the lead
15 agency's authority, in consultation with the State Department of
16 Education, to allocate discretionary Part-H C funds for any
17 legitimate purpose consistent with the statutes and regulations
18 under Part-H C (20 U.S.C. Secs. ~~1471 to 1485~~ 1431 to 1444,
19 inclusive) and this title.

20 SEC. 115. Section 95026 of the Government Code is amended
21 to read:

22 95026. The lead agency shall maintain a system for compiling
23 data required by the federal Office of Special Education Programs,
24 through Part-H C of the *federal* Individuals with Disabilities
25 Education Act, including the number of eligible infants and toddlers
26 and their families in need of appropriate early intervention services,
27 the number of eligible infants and toddlers and their families
28 served, the types of services provided, and other information
29 required by the federal Office of Special Education Programs. All
30 participating agencies listed in Section 95012 shall assist in the
31 development of the system and shall cooperate with the lead agency
32 in meeting federal data requirements. The feasibility of using
33 existing systems and including social security numbers shall be
34 explored to facilitate data collection.

35 SEC. 116. Section 95028 of the Government Code is amended
36 to read:

37 95028. (a) On or before October 1, 1995, the State Department
38 of Developmental Services, on behalf of the Secretary of the Health
39 and ~~Welfare~~ Human Services Agency, and the State Department
40 of Education, on behalf of the Superintendent of Public Instruction,

1 *jointly* shall ~~jointly~~ develop, approve, and implement regulations,
2 as necessary, to comply with the requirements of this title and Part
3 ~~H C~~, as specified in federal statutes and regulations.

4 (b) The regulations developed pursuant to this section shall
5 include, but are not limited to, the following requirements:

6 (1) The administrative structure for planning and implementation
7 of the requirements of this title and Part ~~H C~~.

8 (2) Eligibility for Part ~~H C~~ services.

9 (3) Evaluation and assessment.

10 (4) Individualized family service plans.

11 (5) Service coordination.

12 (6) The program and service components of the statewide system
13 for early intervention services.

14 (7) The duties and responsibilities of the lead agency as specified
15 in Section 95006, including procedural safeguards and the process
16 for resolving complaints against a public agency for violation of
17 the requirements of Part ~~H C~~.

18 (c) The State Department of Developmental Services shall adopt
19 regulations to implement this title in accordance with Chapter 3.5
20 (commencing with Section 11340) of Part 1 of Division 3 of Title
21 2. Initial regulations to implement this title shall be adopted as
22 emergency regulations. The adoption of these initial emergency
23 regulations shall be considered by the Office of Administrative
24 Law to be an emergency and necessary for the immediate
25 preservation of the public peace, health and safety, or general
26 welfare. The initial emergency regulations shall remain in effect
27 for no more than 180 days. These regulations shall be jointly
28 developed by the State Department of Developmental Services
29 and the State Department of Education by July 1, 1994. The
30 Department of Finance shall review and comment upon the
31 emergency regulations prior to their adoption.

32 SEC. 117. Section 95029 of the Government Code is amended
33 to read:

34 95029. The State Department of Developmental Services and
35 the State Department of Education shall ensure that an independent
36 evaluation of the program and its structure is completed by October
37 1, 1996. The evaluation shall address the following issues:

38 (a) The efficiency and cost-effectiveness of the state
39 administrative structure, the local interagency coordinating
40 structure, and the mandatory program components.

- 1 (b) The degree to which programs and services provided through
- 2 regional centers and local education agencies fulfill the purpose
- 3 of Part ~~H~~ C of the *federal* Individuals with Disabilities Education
- 4 Act.
- 5 (c) The extent to which implementation of the program has
- 6 resulted in improved services for infants and their families, and
- 7 greater satisfaction with service delivery by families.
- 8 (d) The outcomes and effectiveness of family resource centers.
- 9 (e) The adequacy of the Part ~~H~~ C funding models. The
- 10 evaluation shall be funded with federal funds.